APPENDIX THREE

SUPPORTING MATERIALS FOR CHARTER AND CODE CHANGES

ATTACHMENT A
MINORITY REPORT ON CITY AUDITOR

San Diego Charter Review Committee
Financial Reform Subcommittee
Minority Report

Date: September 4, 2007

Composed by: John A. Gordon

The Financial Reform Sub-Committee voted to approve a motion last week, whereby the San Diego City Auditor would be appointed by the Mayor, in consultation with the Audit Committee and confirmed by the City Council. To us, the operative words were "appointed by the Mayor". We voted against that proposal, via a 3-2 vote. We much preferred no Mayoral role in the selection, most optimally by direct election by the voters.

We were given a background brief by the Association of Local Government Auditor's (ALGA) National Advocacy Team that laid out independence from management as a prime perquisite for auditor selection. It is just common sense that you can't have a truly independent auditor hired by the Executive Branch, which properly should be under primary scrutiny.

We note that both California Code and Government Auditing Standards require independence in auditing. The ALGA noted that independence can be achieved by Council appointment or voter selection, and the Comptroller General's Independence Standard requires the auditor "...should be free both in fact and appearance from personal, external and organizational impairments" (January 2002).

Finally, we note that the mayoral appointment clause is not consistent with the Kroll Report's Recommendations. The City of San Diego remains under a stipulated SEC Consent Decree, and a corrective action plan, to remedy prior wrongdoing. We must rebuild trust with the regulatory agencies, the financial community, and the public, and we insist on auditor independence.

Signed, Lei-Chala Wilson
Signed, John A. Gordon

ATTACHMENT B
MINORITY REPORT ON CITY ATTORNEY

From: Marc Sorensen
To: Subcommittee Chair Mike McDade

Subj: MINORITY REPORT ON SUBCOMMITTEE DUTIES OF ELECTED OFFICIALS TOPIC SECTION 40

As the dissenting vote on our Subcommittee topic Section 40, I am writing a minority report to document the reasons I am against this action.

The main issue that this proposal is addressing is a better documented attorney-client relationship which will place the City Council or Mayor as the controlling factor for any civil litigation initiated by the City Attorney. As noted by our subcommittee discussion it seeks to place checks and balances on the City Attorney.

While I agree that the control of litigation initiated by the City needs to be clarified, this topic belongs in the parking lot. This topic deals with the interaction of all three branches of our City government, and as such this issue should be fully discussed by them as well as the public who have the right to assure themselves that nothing shall constrain the City Attorney from proposing for and representing the best interests of the Voters.

I voted "no" on this issue because of the process followed by our Subcommittee with respect to this topic, as documented below:

1. First and foremost the amount of time devoted to this action. Our Subcommittee spent more time on topics such as: the Mayor's appointment powers, the City Personnel director, setting salaries, and Managed Competition than we spent on this topic, yet this topic is a major change to the Charter as it assigns powers and duties of all our elected officials, and yet we have not heard from most of those officials.

2. Our Subcommittee meetings were held in our normal setting and time frame, which is really not conducive to participation by the public. Nor were there timely postings of issues and reports on the website to identify this issue to the public. At the last Subcommittee meeting the language was still being modified and the vote was taken without the final draft available for the Subcommittee or anyone else to review.

3. We only heard from one person on this issue, which was a requested presentation in support of this issue. There was no advanced notice of this presentation nor was it documented in any way. The presentation was as much about appointed versus elected City Attorney as it was the attorney-client relationship. The City Attorney did send a representative to object to our discussions on the grounds that as an elected official the City Attorney was not allowed to recommend members of the Committee.

4. The majority of the language recommended for the ballot was derived from the Los Angeles Charter, which our staff person was a member of and actually wrote. When I asked Mr. Ingram about how that was developed his response was:

"The Elected Los Angeles Charter Reform Commission took up this issue in the City Attorney Task Force, for which I led the staff, drafted the reports, and authored the first draft and final editing of the language which is now part of the Los Angeles Charter. The Task Force met a few times, took testimony from representatives of the Mayor and City Attorney's office, and from anyone who sent letters in on the issue. The City Attorney' sister was on the elected commission, so she presented his perspective, even though she was not actually a member of the Task Force. In the end, the language was a compromise between those who wanted an elected City Attorney with robust authority, and those who wanted an appointed City Attorney clearly tasked with representing City agencies. The main work in Los Angeles on the issue was done by the staff on the reports, and the elected commissioners mainly assimilated the information from our reports."

While the language may be a good fit for our City, the process that we are following is not. The Los Angeles charter language came about through a focus group selected by a charter review commission to deal with just this issue. They did the due diligence of seeking out information from the elected officials as well as the public. This issue deals with all our elected officials' responsibilities so care should be taken to ensure the process is both open and deliberative as possible. The process should follow what was done in Los Angeles, advanced notification, adequate preparation, information presentation and open deliberations. It would also be better if the staff supporting this effort was not linked directly to any other efforts in this area, especially the effort that is being used as the foundation for our recommendation.

What I think our Committee should do is simply recommend to the City Council that this issue needs to be addressed.

Marc Sorensen
DEO Subcommittee member

ATTACHMENT C
MEMORANDUM ON EFFECTIVE DATES FOR CHARTER AMENDMENTS

MEMORANDUM

To: Julie Dubick
From: James Ingram
Re: Effective Dates for Charter Amendments
Date: October 3, 2007

The problem with waiting until the end of the sunset period is that the City could find itself returning to Council-Manager government for a brief period, even if the voters were to make Article XV permanent just before the sunset. As Article 11, Section 3 of California's Constitution states:

"SEC. 3. (a) For its own government, a county or city may adopt a charter by majority vote of its electors voting on the question. The charter is effective when filed with the Secretary of State. A charter may be amended, revised, or repealed in the same manner. A charter, amendment, revision, or repeal thereof shall be published in the official state statutes. County charters adopted pursuant to this section shall supersede any existing charter and all laws inconsistent therewith. The provisions of a charter are the law of the State and have the force and effect of legislative enactments.

(b) The governing body or charter commission of a county or city may propose a charter or revision. Amendment or repeal may be proposed by initiative or by the governing body.

(c) An election to determine whether to draft or revise a charter and elect a charter commission may be required by initiative or by the governing body.

(d) If provisions of 2 or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail."

Thus, it is important that the sunset provisions of Article XV be revisited prior to the end of the Strong Mayor trial period. If the public were to delay action until the November 2010 ballot, then it is very likely that even if they citizens did vote to extend the trial period or make the form of government permanent, there would be a time in which the City would legally be required to return to the City Manager system.

ATTACHMENT D
REPORT ON THE VETO

Subcommittee on Interim Strong Mayor
Staff Report on the Veto by James Ingram

The term "veto" is Latin for "I forbid" and is one of those governmental innovations which city charters derive from their national constitutional forbears. A veto that can be overridden by the same majority that enacted an ordinance is not a real veto.

The debates by which the Founders of the American Constitution created that document indicated that they wanted a real veto. In fact, they seriously deliberated over an absolute negative, which the Congress would not have been authorized to over-ride. In the Federalist Papers explaining the veto provisions of the Constitution, the Founders made it clear that they saw a real veto as a critical safeguard on the interests of the people.

The founders of the Constitution made a veto override difficult by requiring achievement of a 2/3 margin in both houses. A 2/3 margin in two houses that were purposely selected in maximally different ways to increase diversity and problematize faction is arguably more difficult to achieve than a ¾ margin in one legislative body. James Madison made the case for the benefits of strong checks in Federalist Papers 10 and 51.

The Federalist Papers on the Importance of a real veto

Federalist Paper #73 went to great lengths to make the case for the existence of a real veto:

"The last of the requisites to energy, which have been enumerated, are competent powers. Let us proceed to consider those which are proposed to be vested in the President of the United States.

The first thing that offers itself to our observation, is the qualified negative of the President upon the acts or resolutions of the two houses of the legislature; or, in other words, his power of returning all bills with objections, to have the effect of preventing their becoming laws, unless they should afterwards be ratified by two thirds of each of the component members of the legislative body.

The propensity of the legislative department to intrude upon the rights, and to absorb the powers, of the other departments, has been already suggested and repeated; the insufficiency of a mere parchment delineation of the boundaries of each, has also been remarked upon; and the necessity of furnishing each with constitutional arms for its own defense, has been inferred and proved. From these clear and indubitable principles results the propriety of a negative, either absolute or qualified, in the Executive, upon the acts of the legislative branches. Without the one or the other, the former would be absolutely unable to defend himself against the depredations of the latter. He might gradually be stripped of his authorities by successive resolutions, or annihilated by a single vote. And in the one mode or the other, the legislative and executive powers might speedily come to be blended in the same hands. If even no propensity had ever discovered itself in the legislative body to invade the rights of the Executive, the rules of just reasoning and

theoretic propriety would of themselves teach us, that the one ought not to be left to the mercy of the other, but ought to possess a constitutional and effectual power of selfdefense.

But the power in question has a further use. It not only serves as a shield to the Executive, but it furnishes an additional security against the enaction of improper laws. It establishes a salutary check upon the legislative body, calculated to guard the community against the effects of faction, precipitancy, or of any impulse unfriendly to the public good, which may happen to influence a majority of that body.

The propriety of a negative has, upon some occasions, been combated by an observation, that it was not to be presumed a single man would possess more virtue and wisdom than a number of men; and that unless this presumption should be entertained, it would be improper to give the executive magistrate any species of control over the legislative body. But this observation, when examined, will appear rather specious than solid. The propriety of the thing does not turn upon the supposition of superior wisdom or virtue in the Executive, but upon the supposition that the legislature will not be infallible; that the love of power may sometimes betray it into a disposition to encroach upon the rights of other members of the government; that a spirit of faction may sometimes pervert its deliberations; that impressions of the moment may sometimes hurry it into measures which itself, on maturer reflexion, would condemn. The primary inducement to conferring the power in question upon the Executive is, to enable him to defend himself; the secondary one is to increase the chances in favor of the community against the passing of bad laws, through haste, inadvertence, or design. The oftener the measure is brought under examination, the greater the diversity in the situations of those who are to examine it, the less must be the danger of those errors which flow from want of due deliberation, or of those missteps which proceed from the contagion of some common passion or interest. It is far less probable, that culpable views of any kind should infect all the parts of the government at the same moment and in relation to the same object, than that they should by turns govern and mislead every one of them.

It may perhaps be said that the power of preventing bad laws includes that of preventing good ones; and may be used to the one purpose as well as to the other. But this objection will have little weight with those who can properly estimate the mischiefs of that inconstancy and mutability in the laws, which form the greatest blemish in the character and genius of our governments. They will consider every institution calculated to restrain the excess of law-making, and to keep things in the same state in which they happen to be at any given period, as much more likely to do good than harm; because it is favorable to greater stability in the system of legislation. The injury which may possibly be done by defeating a few good laws, will be amply compensated by the advantage of preventing a number of bad ones.

Nor is this all. The superior weight and influence of the legislative body in a free government, and the hazard to the Executive in a trial of strength with that body, afford a satisfactory security that the negative would generally be employed with great caution; and there would oftener be room for a charge of timidity than of rashness in the exercise

of it. A king of Great Britain, with all his train of sovereign attributes, and with all the influence he draws from a thousand sources, would, at this day, hesitate to put a negative upon the joint resolutions of the two houses of Parliament. He would not fail to exert the utmost resources of that influence to strangle a measure disagreeable to him, in its progress to the throne, to avoid being reduced to the dilemma of permitting it to take effect, or of risking the displeasure of the nation by an opposition to the sense of the legislative body. Nor is it probable, that he would ultimately venture to exert his prerogatives, but in a case of manifest propriety, or extreme necessity. All well-informed men in that kingdom will accede to the justness of this remark. A very considerable period has elapsed since the negative of the crown has been exercised.

If a magistrate so powerful and so well fortified as a British monarch, would have scruples about the exercise of the power under consideration, how much greater caution may be reasonably expected in a President of the United States, clothed for the short period of four years with the executive authority of a government wholly and purely republican?

It is evident that there would be greater danger of his not using his power when necessary, than of his using it too often, or too much. An argument, indeed, against its expediency, has been drawn from this very source. It has been represented, on this account, as a power odious in appearance, useless in practice. But it will not follow, that because it might be rarely exercised, it would never be exercised. In the case for which it is chiefly designed, that of an immediate attack upon the constitutional rights of the Executive, or in a case in which the public good was evidently and palpably sacrificed, a man of tolerable firmness would avail himself of his constitutional means of defense, and would listen to the admonitions of duty and responsibility. In the former supposition, his fortitude would be stimulated by his immediate interest in the power of his office; in the latter, by the probability of the sanction of his constituents, who, though they would naturally incline to the legislative body in a doubtful case, would hardly suffer their partiality to delude them in a very plain case. I speak now with an eye to a magistrate possessing only a common share of firmness. There are men who, under any circumstances, will have the courage to do their duty at every hazard.

But the convention have pursued a mean in this business, which will both facilitate the exercise of the power vested in this respect in the executive magistrate, and make its efficacy to depend on the sense of a considerable part of the legislative body. Instead of an absolute negative, it is proposed to give the Executive the qualified negative already described. This is a power which would be much more readily exercised than the other. A man who might be afraid to defeat a law by his single VETO, might not scruple to return it for reconsideration; subject to being finally rejected only in the event of more than one third of each house concurring in the sufficiency of his objections. He would be encouraged by the reflection, that if his opposition should prevail, it would embark in it a very respectable proportion of the legislative body, whose influence would be united with his in supporting the propriety of his conduct in the public opinion. A direct and categorical negative has something in the appearance of it more harsh, and more apt to irritate, than the mere suggestion of argumentative objections to be approved or

disapproved by those to whom they are addressed. In proportion as it would be less apt to offend, it would be more apt to be exercised; and for this very reason, it may in practice be found more effectual. It is to be hoped that it will not often happen that improper views will govern so large a proportion as two thirds of both branches of the legislature at the same time; and this, too, in spite of the counterposing weight of the Executive. It is at any rate far less probable that this should be the case, than that such views should taint the resolutions and conduct of a bare majority. A power of this nature in the Executive, will often have a silent and unperceived, though forcible, operation. When men, engaged in unjustifiable pursuits, are aware that obstructions may come from a quarter which they cannot control, they will often be restrained by the bare apprehension of opposition, from doing what they would with eagerness rush into, if no such external impediments were to be feared.

This qualified negative, as has been elsewhere remarked, is in this State vested in a council, consisting of the governor, with the chancellor and judges of the Supreme Court, or any two of them. It has been freely employed upon a variety of occasions, and frequently with success. And its utility has become so apparent, that persons who, in compiling the Constitution, were violent opposers of it, have from experience become its declared admirers.[1]

I have in another place remarked, that the convention, in the formation of this part of their plan, had departed from the model of the constitution of this State, in favor of that of Massachusetts. Two strong reasons may be imagined for this preference. One is that the judges, who are to be the interpreters of the law, might receive an improper bias, from having given a previous opinion in their revisionary capacities; the other is that by being often associated with the Executive, they might be induced to embark too far in the political views of that magistrate, and thus a dangerous combination might by degrees be cemented between the executive and judiciary departments. It is impossible to keep the judges too distinct from every other avocation than that of expounding the laws. It is peculiarly dangerous to place them in a situation to be either corrupted or influenced by the Executive."

The ¾ Veto Override in a city charter

The importance of the veto was clear to the founders of the United States Constitution. In fact, an early session of the United States Congress even established majorities greater than 2/3 for a city. In 1800, Congress acted to provide a charter for the newly established federal city of Washington, D.C. In the law they passed, which was Congress's first action to create a city charter, the legislators provided for a ¾ margin for override of a mayor's veto. The fact that the American legislature would act to create an extraordinary majority veto override process is evidence of their appreciation of the role of the veto and override nationally.

"*AN EARLY EXPERIENCE WITH LIMITED HOME RULE 1800-1871*

[1] Mr. Abraham Yates, a warm opponent of the plan of the convention is of this number.

Congress arrived in the capital in 1800 and realized that decisions had to be made concerning the governance of the people of Washington. With a law passed in 1801, the federal government officially assumed control over the land ceded to the federal district, which included Washington and Alexandria Counties and the cities of Washington, Georgetown and Alexandria.

Form of Government
In addition, through this legislation, Congress:
* appointed three commissioners to govern the city (the same commissioners who had been hired by George Washington to build the capital);
* established a circuit court that called for a chief justice and two associates who held four sessions per year and followed the procedures of the state (V.A. or M.D.) in which the county was located;
* established levy courts, made up of presidentially appointed officials, outside the city limits to assess taxes and manage local affairs;
* called for presidential appointment of marshals and justices of the peace;
* stated that District residents did not have the right to vote in national elections or have representation in Congress.

Within the District of Columbia, the cities of Georgetown and Alexandria continued governing themselves under their own established charters. In 1802, Congress approved a charter to establish a government for the city of Washington within the District.

The charter included provisions for:
* a mayor appointed by the president;
* the mayor to appoint all other offices;
* a twelve-member council elected by the voters with the authority to pass laws and impose taxes;
* all legislation passed by the Council to be sent to the Mayor for approval;
* the Council could override the Mayor's veto by a three-fourths vote…"[2]

The Veto and the States

All 50 states accord their governor the veto power. In 1788, only two states had done so, Massachusetts and New York. The President of the United States was patterned after the powers of the Governor of New York, which were expounded to the Constitutional Convention by delegate James Wilson. Wilson attempted to persuade the Convention to adopt an absolute negative at the Constitutional Convention of June 4, 1787. The founders compromised on a 2/3 veto override, although a number of them would have preferred a larger margin.

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[2] District of Columbia Home Rule Charter Review *in collaboration with* the Federal City Council, "The District of Columbia as a National Capital and the District of Columbia as a Place to Live: A History of Local Governance to Present Day," *BACKGROUND BRIEFING REPORT, Prepared by Georgetown University's Graduate Public Policy Program* http://www.narpac.org/ITXGU03A.HTM

Presently, 44 of the 50 United States require a larger margin to override a governor's veto than was required to pass a law in the first place. Alabama, Arkansas and Kentucky do not require a majority of total membership of both houses to pass a law. Therefore, when these states require a majority of the total membership of both houses to override a governor's veto, this is a larger number than were required to pass the law in the first place. The other three states that allow a governor's veto to be overridden by a majority of both houses—Indiana, Tennessee and West Virginia—require a majority of both houses to pass their laws in the first place.

I have been researching the charters of large cities in California and the United States, and have not found one that bothers to accord its mayor a veto, and then allows that veto to be overridden by the same margin that passed an ordinance in the first place. Under the pre-Prop F era, it took the Mayor and four Council-members to prevent ill-considered actions from being taken. It still takes the Mayor's veto and four Council-members to sustain it to stop ill-considered actions. Did Prop F really create a veto at all?

A veto is not a real veto unless it requires the legislative body to achieve a larger margin than passage of the law required in the first place. That is just a requirement of council reconsideration.

Reconsideration versus Veto

France allows its president to require the Parliament to reconsider, but does not establish a veto or an override. This imperfect process can lead to stalemate, as proposed legislation cycles between the legislative and executive branch with no result. India requires its President to assent to all money bills, but allows this officer some authority over all other bills. If the President does not agree to regular bills, he or she may ask Parliament to reconsider. If both houses of Parliament pass the bill without any changes by majority, then the President must sign the bill. However, the Constitution does not set a time limit on Presidential approval, and thus the country's presidents have used it as a kind of pocket veto to block objectionable laws. Flawed veto processes carry their own set of consequences, leading to stalemate or obstruction. Both France and India have experienced difficulties due to the failure to create a proper veto and override process.

Whether in the case of cities, states or countries, the issue of the veto is critical to executive-legislative relations. The absence of a complete veto and override process is a matter of good government. For a real veto to exist, the legislature must be required to muster a larger margin than initially required for the passage of a law.

Examples of ¾ veto overrides in the LA Charter

The Los Angeles Charter requires the Council to achieve a ¾ margin when that body acts to override the Mayor's and the City Planning Commission's disapproval of amendments to the General Plan. There are also four other instances in which the Los Angeles Charter mandates a three-quarters veto override margin:

"Sec. 250. Procedure for Adoption of Ordinances.
(a) Introduction and Passage. No ordinance shall be passed finally on the day it is introduced, but it shall be held over for one week, unless approved by unanimous vote of all the members of the Council present, provided there is not less than three-fourths of all the members present.
(b) Presentation to Mayor. Every ordinance passed by the Council shall, before it becomes effective, be signed by the City Clerk or other person authorized by the Council, and be presented to the Mayor for approval and signature. If the Mayor does not approve the ordinance, the Mayor shall endorse on it the date of its presentation to him or her, and return it to the City Clerk with a written statement of objections to the ordinance. The City Clerk shall endorse on the ordinance the date of its return to him or her. If the Mayor does not approve or veto an ordinance in accordance with this section within ten days after its presentation to him or her, the ordinance shall be as effective as if signed by the Mayor.
(c) Override by Council. The City Clerk shall present the ordinance, with the objections of the Mayor, at the first Council meeting after the Clerk has received the Mayor's objections. The Council may pass any ordinance over the veto of the Mayor within 45 days after the objections of the Mayor are presented to the Council, by two-thirds vote of the Council or by three-fourths vote where two-thirds vote or more was required for passage of the original ordinance."

"Sec. 514. Transfer of Powers.
(a) Charter Created Powers and Duties. The Mayor may propose the transfer of any of the powers, duties and functions of the departments, offices and boards of the City set forth in the Charter to another department, office or board created by the Charter or by ordinance. The transfer shall be effective if approved by ordinance adopted by a two-thirds vote of the Council, or if the Council fails to disapprove the matter within 45 days after submittal by the Mayor of all documents necessary to accomplish the transfer, including the proposed ordinance transferring powers, duties or functions, and any related ordinances or resolutions concerning personnel or funds affected by the transfer. The Council on its own initiative may, by ordinance, adopted by a two-thirds vote of the Council, subject to the veto of the Mayor or by a three-fourths vote of the Council over the veto of the Mayor, make any such transfer.
(b) Exceptions. The power of the Mayor and Council to act as provided in this section shall not extend to:
(1) Elected Offices;
(2) Proprietary Departments;
(3) Los Angeles City Employees' Retirement System;
(4) Department of Fire and Police Pensions;
(5) City Ethics Commission;
(6) The disciplinary functions of the Fire Department and the Police Department as contained in Sections 1060 and 1070; and
(7) The Police Department and the Fire Department, if the transfer or consolidation would significantly alter or affect the primary purpose or character of the departments.
(c) Ordinance Created Powers and Duties. Powers, duties and functions established by ordinance may be transferred or eliminated by an ordinance proposed by the Mayor or

Council. If the Mayor proposes a transfer or elimination, the action shall be effective if approved by ordinance adopted by a majority vote of the Council, or if the Council fails to disapprove the matter within 45 days after submittal by the Mayor of all documents necessary to accomplish the transfer or elimination, including the proposed ordinance transferring powers, duties or functions, and any related ordinances or resolutions concerning personnel or funds affected by the transfer or elimination."

"Sec. 555. General Plan - Procedures for Adoption.
Procedures pertaining to the preparation, consideration, adoption and amendment of the General Plan, or any of its elements or parts, shall be prescribed by ordinance, subject to the requirements of this section.
(a) Amendment in Whole or in Part. The General Plan may be amended in its entirety, by subject elements or parts of subject elements, or by geographic areas, provided that the part or area involved has significant social, economic or physical identity.
(b) Initiation of Amendments. The Council, the City Planning Commission or the Director of Planning may propose amendments to the General Plan. The Director of Planning shall make a report and recommendation on all proposed amendments. Prior to Council action, the proposed amendment shall be referred to the City Planning Commission for its recommendation and then to the Mayor for his or her recommendation.
(c) Commission and Mayoral Recommendations. The City Planning Commission shall hold a public hearing before making any recommendation on a proposed amendment to the General Plan and shall act within the time specified by ordinance. If the Commission recommends disapproval of an amendment initiated by the Commission, it shall report its decision to the Council and Mayor. After the Commission recommends approval of an amendment initiated by the Commission, or takes action concerning an amendment initiated by the Director or the Council, the Commission shall forward its recommendation to the Mayor. The Mayor shall have 30 days to forward his or her recommendation to the Council regarding the proposed amendment to the General Plan. If either the City Planning Commission or the Mayor does not act within the time specified, the Commission or Mayor shall be deemed to have recommended approval of the proposed amendment.
(d) Council Action. The Council shall conduct a public hearing before taking action on a proposed amendment to the General Plan.
If the Council proposes any modification to the amendment approved by the City Planning Commission, that proposed modification shall be referred to the City Planning Commission and the Mayor for their recommendations. The City Planning Commission and the Mayor shall review any modification made by the Council and shall make their recommendation on the modification to the Council in accordance with subsection (c) above.
If no modifications are proposed by the Council, or after receipt of the Mayor's and City Planning Commission's recommendations on any proposed modification, or the expiration of their time to act, the Council shall adopt or reject the proposed amendment by resolution within the time specified by ordinance.

(e) Votes Necessary for Adoption. If both the City Planning Commission and the Mayor recommend approval of a proposed amendment, the Council may adopt the amendment by a majority vote. If either the City Planning Commission or the Mayor recommends the disapproval of a proposed amendment, the Council may adopt the amendment only by a two-thirds vote. If both the City Planning Commission and the Mayor recommend the disapproval of a proposed amendment, the Council may adopt the amendment only by a three-fourths vote. If the Council proposes a modification of an amendment, the recommendations of the Commission and the Mayor on the modification shall affect only that modification."

"Sec. 607. Limitations on Franchises, Concessions, Permits, Licenses and Leases. Franchises, concessions, permits, licenses and leases shall be subject to further limitations specified in this Article for each Proprietary Department and the following:
(a) Length. The term shall not exceed 30 years or the term specified by applicable federal or state law, whichever is less. If Council makes a finding that a term longer than 30 years would be in the best interest of the City, Council may, by a two-thirds vote, subject to Mayoral veto, or three-fourths vote over the veto of the Mayor, authorize a term up to 50 years, or the maximum period allowed by any federal or state law, whichever is less.
(b) Compensation Adjustments. Every franchise, concession, permit, license, or lease shall include a procedure to adjust the compensation periodically but in no case shall the period between adjustments exceed five years."

"Sec. 680. Other Enterprises.
(a) Entry into Any Other Business. Notwithstanding any provision in the Charter to the contrary, the Council, upon making a finding that it is in the best interests of the City, may by ordinance authorize the department to engage in any lawful business enterprise that is in the best interests of the City's inhabitants and that will not interfere with the department's role as a provider of water and power to the City's inhabitants.
(b) Entry into Public Utility Competition. Without limiting the provisions of subsection (a), the Council may by ordinance adopted by a two-thirds vote and approved by the Mayor, or passed by three-fourths vote of the Council over the veto of the Mayor, authorize the department to provide electricity service or any other service, which may be provided by another utility or direct competitor to any person or entity, whether situated inside or outside of the City or the State of California.
(c) Prohibition of Entry into Water Service Outside Service Area. Water service or products that would be provided outside the department's retail service area are specifically excluded from the provisions of this section.
(d) No Limitation on Department. Nothing in this section limits any right, power or authority granted to the department or to the board elsewhere in the Charter."

The 2/3 figure is not magic

Although many city charters provide for a 2/3 override process, typically the numbers do not allow an exact 2/3 margin vote. Consequently, the override often requires more than 2/3 to override. For example, in Philadelphia there are 17 Council members, and it takes

2/3 to override a Mayoral veto. The smallest number that is 2/3 of 17 is 12, which means that the override actually requires a 71% vote in that city. Much the same is the case in San Francisco, where a veto override of a veto on a regular ordinance requires a 2/3 vote. The smallest number that is 2/3 of 11 is 8; thus, the veto override requires a 73% vote by the Board of Supervisors.

Like Philadelphia and San Francisco, and many other cities, San Diego requires a larger than 51% margin to pass an ordinance. This is because there are an even number of Council members. In all of the other cities that require a margin greater than 51% to pass an ordinance due to the even number of legislators, the charter requires a larger margin for veto override. To provide a veto and then not require a larger number of legislators to override it seems to be uniquely a San Diegan innovation among American cities.

ATTACHMENT E
CITY COUNCIL VOTES AND VETOES TABLE

Subcommittee on Interim Strong Mayor

Staff Report on City Councils-James Ingram and Catherine Tran

Table 1: Comparative Analysis of the City Council in Large California Cities

City	Population, 2005	Form of Government	Council Size	Selection Method (at-large/ district)	Ordinance passage margin (number/%)	Mayoral Veto Authority	Veto Override Margin (number/%)
Los Angeles	3,844,829	Strong Mayor-Council	15	District Elections	8/15 or 53.3%	Yes	10 for regular ordinances (2/3 or 66.7%); 12 for some ordinances (3/4 or 75%).
San Diego	1,266,753[3]	Strong Mayor-Council	8	District Elections	5/8 or 62.5%	Yes	5/8 or 62.5%
San Jose	912,332	Council-Manager (weak mayor)	10 + Mayor	10 District Elections; Mayor elected at-large	6 votes or 55%	No; Mayor votes with Council.	N/A
San Francisco	739,426	Strong Mayor-County Board of Supervisors[4]	11	District Elections	Majority of all members on regular ordinances; 2/3 majority of all members on others (6/11 on regular and 8/11 on others; this is 55% and 73%, respectively)	Yes	2/3 vote on regular majority ordinances; 3/4 on others (these are 8/11 and 9/11 (73% and 82%, respectively).

[3] The 2003 U.S. Census projection was used for this figure; an accurate figure for 2005 was unavailable.

[4] San Francisco is a consolidated city-county, and thus the County Board of Supervisors is the legislative body.

Long Beach	474,014	Council-Manager (weak mayor)	9	9 District Elections	At least 5 votes or 56%, but the Mayor presides over the Council, which allows some informal influence although no voting role.	Yes	5/9 within 30 days for ordinances or resolutions; 6/9 within 30 days for orders or annual budgets or budget amendments or transfers
Fresno	461,116	Strong Mayor-Council	7	7 District Elections	At least 4 votes or 57%	Yes	5/7 within 30 days
Sacramento	456,441	Council-Manager (weak mayor)	8 + Mayor	8 District Elections; Mayor elected at-large	At least 5 votes or 56%	No	N/A
Oakland	395,274	Strong Mayor-Council	8	7 District Elections; 1 At-Large Election	5 votes needed for all actions. Mayor may vote only to break a tie. If there is a 4-4 tie and the Mayor votes to pass an ordinance, the majority is 5/9; if 5/8 councilmembers vote to pass an ordinance, the majority is 5/8 (56% or 63%, respectively).	No	N/A
Santa Ana	340,368	Council-Manager (weak mayor)	6 + Mayor	6 District elections, Mayor elected at-large	Majority of members = 4/7 or 57%	No	N/A

Anaheim	331,804	Council-Manager (weak mayor)	4 + Mayor	At-large	3 votes unless otherwise specified = 3/5 or 60%	No	N/A
Bakersfield	295,536	Council-Manager (weak mayor)	7 + Mayor as presiding officer	7 Wards, Mayor elected at-large	Majority of members = 4/6 or 66.7%; Mayor votes when there is a tie vote	No	N/A
Riverside	290,086	Council-Manager (weak mayor)	7 + Mayor	7 Wards; Mayor elected at-large	4/7 to pass an ordinance, or 57%; 5/7 votes needed to amend budget after passage (71%). Mayor presides over Council, but may only vote to break tie.	No	N/A
Stockton	286,926	Council-manager (weak mayor)	6 + Mayor	6 nominated by district, but elected at-large; Mayor elected at-large	Majority = 4/7 or 57%	No	N/A

Both Table 1 and Table 2 were assembled based on a search of the city charters, administrative & municipal codes, and official city websites for all cities included.

Table 2: Comparative Analysis of the City Council in Large United States Cities

City	Pop'n, 2005	Form of Government	Council Size	Selection Method (at-large/district)	Ordinance passage margin (number/%)	Mayoral Veto Authority	Veto Override Margin (number/%)
New York City, NY	8,213,839	Strong Mayor-Council	51	District Elections	Majority of all members = 26/51 or 51%	Yes. If mayor takes no action in 30 days, it becomes law.	2/3 majority of all to override; 66.7% is 34 members.
Los Angeles	3,844,829	Strong Mayor-Council	15	District Elections	8/15 or 53.3%.	Yes	10 for regular ordinances (2/3 or 66.7%); 12 for some ordinances (3/4 or 75%).
Chicago, IL	2,842,518	Strong Mayor-Council	50[5]	Ward Elections	25 + Mayor to break tie, or 26 (52%), on money bills; majority of council present on regular bills, plus mayor if there is a tied vote.	Yes	34 votes needed to override mayor's veto. That is 2/3.
Houston, TX	2,076,189	Mayor-Council	14 + Mayor[6]	9 Districts, 5 At-Large (Mayor is 15th member)	Majority of members = 8/15 or 53%	No	N/A

[5] Chicago legislators are called "Alderman" even when they are women.
[6] Under Houston's Charter, the city must create two additional council districts if the city's population reaches 2.1 million.

Philadelphia, PA	1,463,281	Strong Mayor-Council	17	10 Districts; 7 At-Large Elections	Majority of members = 9/17 or 53%	Yes, including item veto. Mayor may not veto spending for Auditor or Civil Service Comm.	Mayor must veto within 10 days, Council may override by 2/3 within 7 days after veto. 2/3 of 17 is 12, which is 71%.
Phoenix, AZ	1,461,575	Council-Manager (weak mayor)	8 + Mayor	8 District Elections; Mayor elected at-large	Majority of all members = 5/9 or 56%	No	N/A
San Diego	1,266,753[7]	Strong Mayor-Council	8	District Elections	5/8 or 62.5%	Yes	5/8 or 62.5%
San Antonio, TX	1,256,509	Council-manager (Mayor as at-large member)	10 + Mayor	10 District Elections; Mayor elected at-large	Majority of all members = 6/11 or 55%. If there are 6 or more vacancies, a smaller number may act until vacancies filled.	No	N/A
Dallas, TX	1,213,825	Council-Manager (Mayor as at-large member)	14 + Mayor	14 District Elections; Mayor elected at-large	Majority of all members = 8/15 or 53%	No	N/A

[7] The 2003 U.S. Census projection was used for this figure; an accurate figure for 2005 was unavailable.

San Jose	912,332	Council-Manager (weak mayor)	10 + Mayor	10 District elections; Mayor elected at-large	6 votes or 55%	No; Mayor votes with Council.	N/A
Detroit, MI	886,671	Strong Mayor-Council	9	At-Large Elections	Majority of members = 5/9 or 56%	Yes	2/3 majority within 1 week of veto
Indianapolis, IN	784,118	Strong Mayor-City-County Council[8]	29	25 District Elections; 4 At-Large Elections	Majority of members = 15/29 or 51.7%	Yes	2/3 majority
Jacksonville, FL[9]	782,623	Mayor-Council	19	14 District Elections; 5 At-Large Elections	Depends on the type of measure	Yes	Depends on the type of measure
San Francisco[10]	739,426	Strong Mayor-County Board of Supervisors	11	District Elections	Majority of all members on regular ordinances; 2/3 majority of all members on others (6/11 on regular and 8/11 on others; this is 55% and 73%, respectively)	Yes	2/3 vote on regular majority ordinances; 3/4 on others (these are 8/11 and 9/11 (73% and 82%, respectively).

[8] Indianapolis consolidated with Marion County to form a city-county whose government is called Unigov. The legislative body is the City-County Council.
[9] Jacksonville, Florida is the result of a merger of the city of Jacksonville with the rest of Duval County.
[10] San Francisco is a consolidated city-county, and thus the County Board of Supervisors is the legislative body.

ATTACHMENT F
LIST OF 2/3 COUNCIL VOTES

Subcommittee on Interim Strong Mayor

Revised Staff Report on Council Actions Requiring More Than 5 Votes
by James Ingram and Catherine Tran

Actions that require a 2/3 vote of the Council

- Section 11.2 - to enter a memorandum of understanding with any recognized City employee organization concerning wages, hours and other terms and conditions of employment.

- Section 17 – to pass any ordinance as an emergency measure.

- Section 26 - to create, combine, abolish or decrease the powers of any department, division or board of the City Government.

- Section 41 - to remove a member of the Civil Service Commission for cause.

- Section 90.1, Subdivision 4 - to adopt a resolution stating that the Council will proceed to issue a bond for the City's waterworks without a recommendation by the City Manager; if such resolution is adopted, a two-thirds vote of the Council is required to adopt the ordinance calling the election.

- Section 90.2, Subdivision 3 - to adopt a resolution stating that the Council will proceed to issue a bond for the City's sewer system without a recommendation by the City Manager; if such resolution is adopted, a two-thirds vote of the Council is required to adopt the ordinance calling the election.

- Section 91 - to expend the General Reserve Fund in the event of a public emergency in order to insure the safety and lives and property of the City or its inhabitants.

- Section 94 - to expend public money, in the case of a great public calamity, to safeguard life, health or property and to enter a contract without advertising for or receiving bids.

- Section 99 – to authorize an extension of any contract, agreement or obligation for a period more than five years, after holding a properly noticed public hearing.

- Section 103 - to grant franchises for the use of any of the City's public property.

Other Provisions

- Section 285 - If more than five votes are required for the passage of any ordinance, such larger vote shall be required to override the veto of the Mayor.

- Section 295(e) - requires at least six votes of the Council to pass any ordinance as an emergency measure (analogous to Section 17's 2/3 requirement).

ATTACHMENT G
SUPPLEMENTAL STAFF REPORT ON VETO OVERRIDE

Subcommittee on Interim Strong Mayor

Supplemental Staff Report on Veto Override by James Ingram

Veto Override Language with Super-Majority Overrides

How can a veto and override process be created for ordinances and resolutions where a 2/3 majority is required by law? Of course, this should not include quasi-judicial matters, where a Mayoral veto is not permitted by law? But why should the Mayor be denied a veto on the Annual Appropriations Ordinance, when that implements the budget, the single most important document the City produces?

In Los Angeles and many other strong Mayor cities, the Mayoral veto must be overridden by a three-fourths vote when a two-thirds vote was required on an ordinance or resolution initially. In San Diego, the 2/3 and 3/4 margins would look as follows, depending on the number of Council members established:

Council Size	Majority	2/3	3/4
9 members	5	6	7
11 members	6	8	9
13 members	7	9	10
15 members	8	10	12

Below are the options for language for the veto, including the larger supermajorities when a 2/3 vote was initially required:

Option 1 - 9-member Council

Section 285: Enactment Over Veto
The Council shall reconsider any resolution or ordinance vetoed by the Mayor. If, after such reconsideration, at least two-thirds of the entire Council vote in favor of passage, that resolution or ordinance shall become effective notwithstanding the Mayor's veto. If more than five votes are required for the passage of any resolution or ordinance by the provisions of this Charter or other superseding law, then the Council majority necessary to override the Mayor's objections shall be at least one vote larger than was necessary to pass the ordinance. If a vetoed resolution or ordinance does not receive sufficient votes to override the Mayor's veto within thirty (30) calendar days of such veto, that resolution or ordinance shall be deemed disapproved and have no legal effect.

Option 1 - 11-member Council

Section 285: Enactment Over Veto
The Council shall reconsider any resolution or ordinance vetoed by the Mayor. If, after such reconsideration, at least two-thirds of the entire Council vote in favor of passage, that resolution or ordinance shall become effective notwithstanding the Mayor's veto. If more than six votes are required for the passage of any resolution or ordinance by the provisions of this Charter or other superseding law, then the Council majority necessary to override the Mayor's objections shall be at least one vote larger than was necessary to pass the ordinance. If a vetoed resolution or ordinance does not receive sufficient votes to override the Mayor's veto within thirty

(30) calendar days of such veto, that resolution or ordinance shall be deemed disapproved and have no legal effect.

Option 1 - 13-member Council

Section 285: Enactment Over Veto
The Council shall reconsider any resolution or ordinance vetoed by the Mayor. If, after such reconsideration, at least two-thirds of the entire Council vote in favor of passage, that resolution or ordinance shall become effective notwithstanding the Mayor's veto. If more than seven votes are required for the passage of any resolution or ordinance by the provisions of this Charter or other superseding law, then the Council majority necessary to override the Mayor's objections shall be at least one vote larger than was necessary to pass the ordinance. If a vetoed resolution or ordinance does not receive sufficient votes to override the Mayor's veto within thirty (30) calendar days of such veto, that resolution or ordinance shall be deemed disapproved and have no legal effect.

Option 1 - 15-member Council

Section 285: Enactment Over Veto
The Council shall reconsider any resolution or ordinance vetoed by the Mayor. If, after such reconsideration, at least two-thirds of the entire Council vote in favor of passage, that resolution or ordinance shall become effective notwithstanding the Mayor's veto. If more than eight votes are required for the passage of any resolution or ordinance by the provisions of this Charter or other superseding law, then the Council majority necessary to override the Mayor's objections shall be at least two votes larger than was necessary to pass the ordinance. If a vetoed resolution or ordinance does not receive sufficient votes to override the Mayor's veto within thirty (30) calendar days of such veto, that resolution or ordinance shall be deemed disapproved and have no legal effect.

ATTACHMENT H
TABLE COMPARING SAN DIEGO COUNCIL DISTRICTS TO THOSE OF OTHER CITIES AND EACH OTHER IN TERMS OF SIZE

Subcommittee on Interim Strong Mayor

Staff Briefing on the Recommendation of 11 Council Districts and Redistricting as Soon as Practicable by James Ingram

For evidence of the need to increase the number of Council members in San Diego, one need only examine the relevant data from other large cities in the U.S. and California. Table One shows that San Diego's Council members represent districts that are over one-third larger (37%) than their counterparts in other big cities in the United States. Table Two shows that San Diego's Council members represent districts that are nearly double the size of their counterparts in California's other large cities. If San Diego were to increase the Council to 11 members, this would make it easier for members to represent the needs of their communities.

Table One: Ratio of Population to Number of Council Members in Big U.S. Cities

CITY	POPULATION	COUNCIL SIZE	POPULATION / COUNCIL MEMBER
New York City	8,213,839	51	161,056
Los Angeles	3,844,829	15	256,321
Chicago	2,842,518	50	56,850
Houston	2,076,189	14	148,299
Philadelphia	1,463,281	17	86,075
Phoenix	1,461,575	8	182,697
San Diego	**1,266,753**	**8**	**158,344**
San Antonio	1,256,509	10	125,651
San Jose	912,332	10	91,233
Detroit	886,671	9	98,519
Indianapolis	784,118	29	27,038
Jacksonville	782,623	19	41,191
San Francisco	739,426	11	67,221
AVERAGE	**2,040,820**	**19**	**115,423**

Table Two: Ratio of Population to Number of Council Members in Big California Cities

CITY	POPULATION	COUNCIL SIZE	POPULATION / COUNCIL MEMBER
Los Angeles	3,844,829	15	256,321
San Diego	**1,266,753**	**8**	**158,344**
San Jose	912,332	10	91,233
San Francisco	739,426	11	67,221
Long Beach	474,014	9	52,668
Fresno	461,116	7	65,874
Sacramento	456,441	8	57,055
Oakland	395,274	8	49,409
Santa Ana	340,368	6	56,728
Anaheim	331,804	4	82,951
Bakersfield	295,536	7	42,219
Riverside	290,086	7	41,441
Stockton	286,926	6	47,821
AVERAGE	**776,531**	**8**	**82,253**

The Subcommittee on Interim Strong Mayor has recommended language that calls for the legislative body to be redistricted "as soon as practicable." The Subcommittee did not specify a date certain for the redistricting because City Attorney representatives raised concerns as to the legality of doing so. Such matters as redistricting come under the Voting Rights Act. It is important to note that San Diego moved to district primaries after 1988 because of a Voting Rights Act-based challenge to the City's elections process, as established by the 1931 Charter.

Some have raised concerns that if San Diego were to redistrict prior to the 2010 Census, this would impose undue costs upon the City. To undergo redistricting in 2009, and then to need to do so again in 2011, would cost money. Furthermore, some have pointed out that if the City were to redistrict before the results of the 2010 Census became available, a Voting Rights Act-based challenge could be made. Such cases as *Thornburgh v. Gingles* have held that redistricting which results in minority vote dilution is unconstitutional. To redistrict prior to the Census, especially while increasing Council size, could unintentionally result in such a retrogression.

The principle of "one person-one vote" was the driving force behind such court decisions as *Thornburgh*. This critical issue also propelled the court consideration of a plethora of Voting Rights Act cases throughout the nation from the 1960s into the 1990s. From *Baker v. Carr* (1962) to *Garza v. County of Los Angeles* (1990), there were scores of these cases across the United States. Some resulted in alterations to state legislative apportionments (*Baker*) and redistricting (*Garza*), while others brought about changes in council size and election procedures. Houston's establishment of a hybrid at large-district elections system, as well as the repeal of district-based general elections for San Diego's Council, are prime examples.

The most important point to consider when examining the prospect of early redistricting for San Diego is that this one person-one vote principle is not being met at present. In fact, early redistricting might be justified because the populations of the Council Districts are currently inconsistent with one person-one vote requirements.

San Diego Council District	Population in Fall 2005
1	184,516
2	161,328
3	158,676
4	157,819
5	171,135
6	157,079
7	151,050
8	164,133

Source: San Diego Association of Governments; (www.sandag.org).

According to SANDAG's figures for 2005, there is already a large disparity between the populations of some of San Diego's Council Districts. The largest district at present is Council District 1, and the smallest Council District is Council District 7. CD1's population is larger than that of CD7 by 33,466, which means that the Council member for District One must represent the needs of between one-fourth and one-fifth as many people as the member for District Seven.

ATTACHMENT I
REPORT ON INDEPENDENT BUDGET ANALYST

Subcommittee on Interim Strong Mayor

Staff Briefing on Independent Budget Analyst
by James Ingram

The Subcommittee requested research regarding the issue of the Independent Budget Analyst.

Staff Analysis

San Diego's Independent Budget Analyst was one of the institutions produced by Prop F. Since the office is established by Article XV of the Charter, its charter status will cease to exist when Article XV sunsets on December 31, 2010. The terms of Article XV granted the City Council authority to determine most of the details of this office (Section 270(f), and the Mayor is not allowed to veto the Council's actions in regard to it (Section 280(a)(1)).

The IBA's office was initially conceived by the 1999 charter review committee that ultimately helped to bring Prop F to the ballot. The members of that committee envisioned the City following the federal model, wherein the executive branch is equipped with the Office of Management and Budget (OMB), whose projections and analyses the legislative branch may check through the work of the Congressional Budget Office (CBO).

At present, the Office of Independent Budget Analyst does not appear to possess as broad a mandate as other cities authorize their equivalent officer to hold. The model of a more expansive office would appear to be Los Angeles' Chief Legislative Analyst (CLA). This office was not created by charter amendment. In fact, the creation of the CLA's office dates back to a 1950s-era disagreement between the Mayor and Council. The Mayor wanted to fire Los Angeles' Chief Administrative Officer (CAO), and many Council members did not, and thus the Council hired the controversial CAO as the first CLA.

Los Angeles' CLA is present in that city's charter today only by omission. The charter expressly exempts the CLA's office from the provisions for Mayoral appointment and removal of the general managers of other city departments (with Council approval), and implicitly exempts that office from civil service. The details of the CLA's office are a matter of the Administrative Code, although the Mayor did hold veto authority over the ordinance that established it.

Los Angeles' CLA has many functions, but probably the most important is its role with respect to the city budget. The importance of the budget has also led other cities to create a budget office that is independent of the Mayor's office. New York City, for example, authorizes a committee consisting of one Council member, one of its five Borough Presidents, the Comptroller and the Public Advocate to appoint a Director to lead the Independent Budget Office (IBO). The IBO has a budget that must be at least 10% as much as is allocated for New York City's OMB, and holds extensive reporting authority with regard to the city's different budgets. New York City provides separately that the City Council will be able to retain and compensate professional staff to review the city's finances and legislation. In a sense, New York City separates the functions of the Los Angeles CLA into two different staffs.

Like Los Angeles and New York City, Detroit and Philadelphia are also large strong mayor cities. These two cities do not require in their charters that their city

legislatures are equipped with as much budgetary and policy making staff support as are the councils of LA, NYC or San Diego.

Below are the relevant charter and municipal/administrative code sections for Detroit, Los Angeles, New York City and Philadelphia. If the Subcommittee would like, staff can survey all of the largest strong mayor cities in the country, as well as the largest California cities fro further examples. However, it seemed appropriate to present the preliminary results of our research, since this item has come up for discussion under the work-plan of this Subcommittee.

Relevant Charter and Municipal/Administrative Code Sections from Other Cities

Detroit

"Sec. 4-109. Investigation.
The city council may make any investigations into the affairs of the city and the conduct of any city agency.

Sec. 4-110. Investigative powers.
The city council may subpoena witnesses, administer oaths, take testimony and require the production of evidence in any matter pending before it or any of its committees. To enforce a subpoena or order for production of evidence or to impose any penalty prescribed for failure to obey a subpoena or order, the city council shall apply to the appropriate court.

Sec. 4-111. Council clerk.
The city clerk shall serve as the city council's clerk and shall keep a record of all its ordinances, resolutions, and other proceedings and perform such other duties as it may provide.
##
Sec. 4-120. Council personnel.
The city council may appoint a staff, exempt from article 6, chapter 5 of this Charter.

Sec. 4-121. Special counsel.
The city council may obtain the opinion or advice of an outside attorney in any matter pending before it. Where there exists a conflict of interest between the city council and another branch of government, the city council has the authority to retain an attorney licensed to practice law in Michigan who shall represent the city council in legal proceedings. Such attorney shall not represent the city as a municipal corporation in any legal proceeding."

Los Angeles

<u>Charter Sections</u>

"Sec. 508. Appointment and Removal of Chief Administrative Officers.
(a) Applicability. Subsections (a) through (e) of this section shall apply to all chief administrative officers except the Chief of Police, the Executive Officer of the City Ethics Commission, the Executive Director of the Employee Relations Board, the general managers of the Fire and Police Pensions and the Los Angeles City Employees Retirement System, and the general managers of the Proprietary Departments. The following shall also be considered chief administrative officers for the purposes of this section: the Treasurer; the Executive Director of any City

commission or agency created by ordinance that performs regulatory functions; and the executive director of all other ordinance created commissions or agencies unless the ordinance creating the commission or agency provides otherwise. The provisions of this section shall not apply to the Chief Legislative Analyst."

"ARTICLE X: CIVIL SERVICE
Sec. 1000. Applicability.
The provisions of this Article shall apply to all employees of the City, except for those specifically exempted in Section 1001.
Sec. 1001. Exemptions.
Each of the following positions shall be exempt from this Article:
(a) Exempt Positions.
###
(3) All chief administrative officers of the City's departments and offices and the Directors of the Public Works' Bureaus of Contract Administration, Engineering, Sanitation, Street Lighting and Street Services.
###
(7) Positions established by the Council for the purpose of assisting the members of the Council in the performance of their duties, except for clerical personnel."

Administrative Code Sections

"CHAPTER 6
CHIEF LEGISLATIVE ANALYST
ARTICLE 1
CREATION OF THE OFFICE
Sec. 20.100. Designation of Office.
There is an office within the legislative branch of the government of the City of Los Angeles known as the Office of the Chief Legislative Analyst, hereinafter referred to in this chapter as the "Office", that shall provide technical staff assistance to the Council, its various Committees, and individual members of Council in their work of legislation.
ARTICLE 2
CONTROL AND MANAGEMENT
Sec. 20.105. The Chief Legislative Analyst.
Said Office is under the control and management of the Chief Legislative Analyst.
Sec. 20.106. Appointment and Removal of the Chief Legislative Analyst.
The Chief Legislative Analyst shall be exempt from Article X of the Charter, and shall be appointed by and may be removed by a two-thirds vote of all members of the Council.
ARTICLE 3
POWERS AND DUTIES IN GENERAL
Sec. 20.110. Council Services.
Subject to such rules, regulations and direction as the Council may prescribe, the Chief Legislative Analyst shall:
(a) Perform duties of investigation and analysis for, and recommendation to the Council, its Committees and its individual members in their work of legislation.
(b) Upon request of a Committee Chairman, provide a technical staff member as a consultant to the involved committee, to conduct such investigations, prepare such reports, schedules, analyses, and recommendations and provide technical assistance and information for the committee as may be necessary or requested.
(c) Serve on such Ad Hoc or Advisory Committees as the Council may direct.

(d) Prepare an impartial summary of all City Charter amendments or revisions appearing on the ballot, as provided in the City's Election Code.

(e) Assist the Council, its Committees including the Rules Committee, or individual members of Council in matters relating to their budgets, office space, personnel, and office administration as requested.

(f) Subject to Council instruction and approval, prepare and administer the annual budget for the Council with such assistance from the City Clerk as may be needed.

(g) Administer public information functions for the Council.

(h) Serve on the Ballot Simplification Committee.

(i) Have full charge and control of all work, duties, and powers of the Office, be responsible for the administration of its affairs, and issue instructions to the employees of the Office in line with their duties.

(j) Keep the Council informed as to the actions of the Office.

(k) Perform such duties as may be imposed by the Council.

Sec. 20.111. Legislation and Intergovernmental Relations.

The Chief Legislative Analyst shall:

(a) Coordinate the development of legislative policy for the Council, and monitor and report to the City Council on the implementation and results of the City's Legislative Program at the State, Federal and Local levels of government.

(b) Serve as "Governmental Affairs Representative" for the Council.

Sec. 20.112. Budget Analysis.

The Office shall assist the Council and its Committees in their review and approval of the Mayor's proposed budget. Prior to and during this process, the Office will provide the Council and the Committees with such reports, schedules and analyses as directed."

New York City

"§ 47. Legislative professional staff. Within appropriations for such purpose, the council shall establish a structure within the City Council and retain professional staff to review and analyze proposed budgets and departmental estimates, requests for new taxes or changes in taxes, budget modifications, capital borrowings and mayoral management reports. Such staff shall assist the committees of the council and Council Members in their analysis of proposed legislation and in review of the performance and management of city agencies."

"§ 259. Independent budget office. a. There shall be an independent budget office to be headed by a director who shall be appointed upon the recommendation of the independent budget office advisory board, by a special committee convened for this purpose. Such committee shall consist of the comptroller, the public advocate, a borough president chosen by the borough presidents, and a council member chosen by the council, and shall act by majority vote. The director shall be appointed without regard to political affiliation and solely on the basis of fitness to perform the duties assigned by this chapter. The term of office of the director first appointed shall expire on August first, two thousand, and the terms of office of directors subsequently appointed shall expire on such date in each fourth year thereafter. Any individual appointed to fill a vacancy prior to the expiration of a term shall serve only for the unexpired portion of the term. An individual serving as director at the expiration of a term may continue to serve until a successor is appointed.

b. The appropriations available to pay for the expenses of the independent budget office during each fiscal year shall not be less than ten percentum of the appropriations available to pay for the expenses of the office of management and

budget during such fiscal year. The director shall appoint such personnel and procure the services of such experts and consultants, within the appropriations available therefor, as may be necessary for the director to carry out the duties and functions assigned herein. Such personnel and experts shall perform such duties as may be assigned to them by the director.

c. The director shall be authorized to secure such information, data, estimates and statistics from the agencies of the city as the director determines to be necessary for the performance of the functions and duties of the office, and such agencies shall provide such information, to the extent that it is available, in a timely fashion. The director shall not be entitled to obtain records which are protected by the privileges for attorney-client communications, attorney work product, and material prepared for litigation.

d. There shall be an independent budget office advisory committee consisting of ten members appointed jointly by the comptroller and the public advocate for five year staggered terms. Of the members originally appointed, two shall serve until the thirty-first day of March, nineteen hundred ninety-nine, two shall serve until the thirty-first day of March, two thousand, two shall serve until the thirty-first day of March, two thousand one, two shall serve until the thirty-first day of March, two thousand two and two shall serve until the thirty-first day of March, two thousand three. The members shall all be individuals with extensive experience and knowledge in the fields of finance, economics, accounting, public administration and public policy analysis, including at least one former director of the New York city office of management and budget or of a comparable office in another local government jurisdiction in the United States; one nationally recognized expert in the fields of budget theory and the budgetary process; one former director of the New York state division of the budget or of a comparable legislative or executive office in another state government; one dean or director or former dean or director of a graduate school of business administration located in New York city; one dean or director or former dean or director of a graduate school of public administration or public affairs or public policy located in New York city; one chair or former chair of a graduate economics department of a college or university located in New York city; one officer or former officer of, or economic advisor of, a labor union; one officer or former officer of, or economic advisor to, a business corporation; one officer or former officer of a civic or public interest advocacy organization involved in budgetary matters; and one officer or former officer of a human services advocacy organization involved in budget matters. No member may be reappointed to consecutive terms. Vacancies occurring because of the expiration of terms shall be filled promptly on the recommendation of the members of the committee whose terms are not expiring. Vacancies occurring otherwise shall be filled promptly on the recommendation of the remaining members of the committee. The members of the committee shall receive no compensation but shall be reimbursed for their necessary expenses. The committee shall at its first meeting in every even numbered year elect, from among its members, a chair and vice-chair who shall serve until the thirty-first day of March of the next even numbered year."

"§ 237. Report of independent budget office on revenues and expenditures. On or before the first day of February, the director of the independent budget office shall publish a report, for the ensuing fiscal year, with respect to expected levels of revenues and expenditures, taking into account projected economic factors and the proposals contained in the preliminary budget submitted by the mayor for such fiscal year. Such report shall also include a discussion of city budget priorities, including alternative ways of allocating the total amount of appropriations, expenditures and commitments for such fiscal year among major programs or functional categories

taking into account how such alternative allocations will meet major city needs and effect balanced growth and development in the city."

"§ 246. Report of independent budget office on preliminary budget. On or before the fifteenth day of March, the director of the independent budget office shall publish a report analyzing the preliminary budget for the ensuing fiscal year."

"§ 252. Report of independent budget office on executive budget. On or before the fifteenth day of May, the director of the independent budget office shall publish a report analyzing the executive budget for the ensuing fiscal year."

"§ 211. Capital budget borough allocations. a. Borough allocation. Five percent of the appropriations, funded by debt supported by city tax levy funds and state and federal funds over which the city has substantial discretion, proposed in the executive capital budget for the ensuing fiscal year, except any lump sum appropriation for school construction or rapid transit proposed to be made to public authorities established pursuant to the provisions of state law, shall be allocated among the boroughs by a formula based on an equal weighting of factors relating to population and geographic area, and shall be known as the capital budget borough allocation. Such formula shall be established by local law, but in any fiscal year for which no such local law is effective such amount shall be allocated among the boroughs on the basis of the average of (i) each borough's share of the total population of the city, and (ii) each borough's share of the total land area of the city.

b. Preliminary borough allocations; initial borough president notification. Concomitantly with the submission of the preliminary capital budget and preliminary certificate, the mayor shall inform each borough president of the portion of the executive capital budget for the ensuing fiscal year and of the executive capital budgets for each of the three succeeding years that, pursuant to the formula required by subdivision a of this section, would be allocated to each borough if the amount of the appropriations proposed in the executive capital budget for each of such fiscal years were the same as the maximum amounts of appropriations for such years which the mayor anticipates to be certified in the preliminary certificate issued in accordance with section two hundred thirty-five. The amount of such portion shall be known as the preliminary capital budget borough allocation.

c. Borough president proposals. 1. Each borough president, during the consultations required by section two hundred forty-four, shall submit to the mayor, in such form as the mayor shall prescribe, proposed capital appropriations in an amount not exceeding that borough's allocation of the capital budget borough allocation as certified by the mayor to the borough presidents during such consultations. The timing of such certification shall allow sufficient time for such consultations and for meeting the deadlines established by section two hundred forty-nine. Each such proposed appropriation shall be accompanied by the following information:

(a) for each such proposed appropriation for construction of a capital project, the estimated annual cost to operate and maintain the facility to be constructed pursuant to such appropriation when construction is completed. Such estimates shall be prepared in accordance with the standards established for this purpose pursuant to section two hundred twenty-one of this chapter and shall be certified by the director of the office of management and budget. In the event that a borough president and the director of management and budget do not agree on such estimate for a particular project, such director and the director of the independent budget office shall jointly certify an estimate for such purpose;

(b) for each such proposed appropriation for the planning and design of a capital project, (i) the estimated cost of the construction of the project, and (ii) the fiscal

year in which the borough president intends to propose an appropriation for the construction of the project, if no technical problems regarding the viability of the project are identified during planning, site selection or design;

(c) the total of all appropriations which will be necessary during the three ensuing fiscal years to provide for the construction of projects for which planning and design appropriations are being proposed.

2. If a borough president proposes an appropriation for the construction of a capital project, the appropriation must provide for the total amount estimated to be necessary for the completion of the project. If such a proposed appropriation for the construction of a capital project is for an amount which is less than the amount that the office of management and budget estimates to be necessary for the completion of the project, the borough's capital budget borough allocation in any future year in which additional appropriations are necessary for the completion of the project shall be reduced by the amount of such additional appropriations.

3. If the total appropriations necessary, during any of the ensuing three fiscal years, to provide for the construction of (i) projects for which the borough president is proposing appropriations for planning and design, and (ii) projects for which appropriations were previously made for planning and design on the recommendation of the borough president, is greater than the capital budget borough allocation anticipated to be available during such years based on the certificate issued pursuant to paragraph sixteen of section two hundred fifty of this charter, then the borough president shall submit for inclusion in the executive budget a list of the projects requiring construction appropriations during such year, in priority order.

4. If the estimated annual cost to operate and maintain the capital projects being proposed for construction by a borough president is greater than the amounts dedicated to such expense budget purposes from the expense budget borough allocation and the capital budget borough allocation expense budget contingency projected to be available to the borough president in one or more ensuing fiscal years then such proposed appropriations may only be included by a borough president in the capital budget with the concurrence of the mayor.

d. The mayor shall include the proposed appropriations submitted by the borough presidents in accordance with subdivision c of this section in the executive capital budget provided however, that the mayor may also include such comments and recommendations relating to such proposals as the mayor deems appropriate."

Philadelphia

"Section 2-105
Employment of Counsel.
In the event the Law Department declines to advise or render legal services to the Council in any matter and whenever the Council is conducting an investigation relating to the executive and administrative branch of the City government, the Council may employ and fix the compensation of counsel of its own selection to handle such matter or to assist in conducting such investigation. In all other cases it shall obtain legal advice and services exclusively from the Law Department.
ANNOTATION
Sources: No specified source.
Purposes:The Law Department is designated as counsel for the Council as well as for the executive branch of the government. However, provision is made for Council obtaining its own counsel in the event the Law Department declines to act or whenever Council is making an investigation of the executive branch of the

government. Under such circumstances Council is assured independence from the executive branch in order to enable it to function properly."

"Section 2-403
Employment of Personnel, Expenses and Cooperation of City Departments and Agencies.
For the purpose of conducting inquiries and investigations the Council by resolution may employ, or authorize the employment by its committees, and fix the compensation of counsel, experts and employees and authorize such other expenditures as it deems necessary, but a limit of the total cost shall be stated which shall not be exceeded except by vote of the Council authorizing additional amounts. However, the Council or any of its committees may, with the consent of the head of any department, board or commission of the City, utilize the services, information, facilities and personnel of such department, board or commission.
ANNOTATION
Sources: United States Code, Title 2, Section 196; Title 29, Section 194.
Purposes:The employment of personnel by the Council for any of its committees conducting inquiries and investigations is authorized for the regular staff of Council will frequently be inadequate for this special work. Thus the Council will be able to engage lawyers, accountants, scientists, and additional clerical help to meet the needs of any particular investigation or inquiry. to prevent the incurring of unlimited costs, Council is required to set a limit of the total expenditures to be made for any investigation or inquiry. This limit may be increased from time to time by the Council. Personnel and facilities of administrative agencies may be utilized, but only with the consent of the head of the agency."

ATTACHMENT J
FINANCIAL OFFICER LANGUAGE FOR FINAL REPORT

Memorandum

To: Julie Dubick
From: James W. Ingram III
Re: Chief Financial Officer Language for Final Report
Date: September 29, 2007

Per Chair Davies request, the staff has continued to work on the report. I noticed in doing so that a number of very important changes need to be made to the recommended language regarding the Chief Financial Officer (CFO). These do not represent changes to the Committee's intent, and therefore fit well within the mandate of staff. Perhaps approval of these changes could be handled by the Committee as part of a "consent calendar" at its October 4 meeting.

The Charter Review Committee deliberated on the issue of the City Auditor and Comptroller on September 21, 2007 meeting. At the end of the meeting, I was talking with Catherine Bradley, the Business & Government Section Chief who the City Attorney has assigned as the Committee's Legal Advisor. She pointed out that the Committee had not specifically approved the Section 45 change to the appointment process for the City Treasurer. Rather, the Committee's motion had only addressed the City Auditor and Comptroller, transferring its functions to the CFO. I passed this information on to Lisa Briggs, who included the Section 45 change in the agenda for the September 27 meeting, where the Committee then approved it. Of course, the Committee had already approved the Section 45 alteration at the meeting on August 23, but the City Attorney's Office had contended that notification was too sparse to comport with Brown Act requirements, and thus the Committee had been compelled to return to the Section 39 and Section 45 issues at a later meeting.

Ms. Bradley also raised the issue of the CFO's civil service status at the end of the September 21 meeting. She showed me the part of Charter section 117 which exempts "elective officers of the city" from the civil service. She attributed the City Auditor and Comptroller's exempt status to the fact that the Council elected the officer, per the terms of Charter section 39. We were not able to continue discussing this issue, as the meeting was over and she indicated in leaving that she would be unable to attend the Committee's September 27 meeting, and that she did not yet know who the City Attorney would send to act as Legal Advisor for that meeting. I thought about her contention, and was concerned about its import. Under the terms of Article XV, the City Auditor and Comptroller is no longer elected by the Council, but is now an appointee of the Mayor confirmed by the Council. Does this mean that under the Charter, the City Auditor and Comptroller would no longer be exempt from civil service?

I had to work on the Committee's final report to have it ready by the September 27 meeting, and therefore I was not able to follow up on the issue that Ms. Bradley had raised. At the September 27 deliberations of the Subcommittee on Financial Reform, I pointed out to members that the revision related to section 45 was on the agenda, and I also told them that there was another sentence I had included in the report for the September 21 meeting that was also not explicitly approved by the full Committee. It was the sentence stating that every time the words "Auditor and Comptroller" were used in the Charter, the Charter should instead be read to say CFO. The sentence explicitly exempts Section 111 from this transfer, because in that Charter section the City Auditor and Comptroller acts as an Auditor. The

Subcommittee and Committee clearly favored this transfer of comptroller functions to the CFO, as indicated in all of their deliberations. The Subcommittee Chair indicated that she would remind the chair that this needed to be explicit in the vote by the Committee at the deliberations meeting. The Committee later voted to approve the recommended sentence transferring all of the Auditor and Comptroller's management-related functions to the CFO.

At the end of the Subcommittee meeting, I had to go and prepare the balanced budget language the Subcommittee voted for deliberations at the meeting that evening. Jeff Kawar of the IBA's Office asked me if it was the case that every time in the Charter that the Auditor and Comptroller appears, the officer is always acting as a comptroller, except for Section 111. I told him that I had checked this, and had given all of the relevant sections in the report of the Subcommittee on Financial Reform that was deliberated on September 21. However, I assured him that I would go back and check to ensure that this was the case. Since the end of the September 27 meeting, I have been working on further revisions for the Committee's final report.

Today, I again went through the whole Charter to make absolutely sure that I was right about the CFO. I carefully reviewed every section that includes the City Auditor and Comptroller. They are Charter sections 39, 45, 70, 71, 72, 74, 80, 82, 83, 86, 87, 88, 89, 110, 111, 112, 126 and 144. There are two subsections that refer to this officer in Article XV, but they were incorrectly drafted and approved by the voters, and the officer is called and "Auditor and Controller." Technically, this could mean that Proposition F did not alter Section 39, because the officer's name is misspelled. This would call into question the Proposition F-specified processes for appointment, confirmation and removal of the City Auditor and Comptroller (see Charter sections 265(b)(10) and (11)).

When reading these sections, I also perused Section 117 to check on Ms. Bradley's position regarding the City Auditor and Comptroller's civil service status. I found that all of the appointed officers similar to the City Auditor and Comptroller are specifically exempted: namely, the City Clerk and the Treasurer. There is a provision that a "Budget Officer" is exempt, but that is not the City Auditor and Comptroller. All department heads and one of their top deputies are exempt, but the Charter does not specify that the City Auditor and Comptroller is a department head.

The City Auditor and Comptroller's civil service exemption derives from the fact that the Municipal Code has classified the officer as a department head. In effect, the Mayor and Council have made the City Auditor and Comptroller civil service exempt by ordinance (See Chapter 2, Article, Division 18 (§22.1801)). Perhaps this is too important a matter to be left to the Code. One way to solve this problem would be to revise Section 39 to define the CFO as a department head. A better solution would be to add the CFO to the list of civil service-exempt officers under Section 117. The disadvantage of expressly naming the CFO a department head is that then you would call into question the status of other City department heads without that language covering their positions. If you single out one officer and indicate that he or she is a department head, then later someone could argue that was the only officer intended to be a department head and carry exempt status. This could require that all department heads be classified employees unless the term "department head" appeared in connection with their positions. The best fix would

be to add the “Chief Financial Officer” to the list of exempt employees, along with the Treasurer.[11]

Staff would also recommend revising Sections 265(b) (10) and (11) so that the word “Controller” is changed to the word “Comptroller.” This change should not go to the ballot as part of the Interim Strong Mayor changes, because it fits more appropriately with the CFO Charter Amendment. The change should thus change the words “City Auditor and Controller” to “Chief Financial Officer”. This item must be fixed in order to assure that the Article XV appointment and removal process is legal.

[11] The same argument could be made for the City Auditor. It is clear based on the Committee’s choice to make the City Auditor an individual hired for a term that he or she is not a classified employee. Yet the Charter section does not state that the officer is the head of a department, and perhaps should not do so, given the argument I just made. This officer should also be added to the list of civil service exempt employees under Section 117.

ATTACHMENT K
REPORT ON BIG-CITY AUDITING FUNCTIONS

Subcommittee on Financial Reform

Staff Report on Big City Auditing Functions by James W. Ingram III

The Subcommittee on Financial Reform requested a report on the Auditing Functions of six specific cities: Los Angeles, New York City, Oakland, San Francisco, San Jose and Seattle. More specifically, the Subcommittee wanted a more detailed analysis of these cities' structures for auditing, how these structures were created, and how they have performed.

Comparative Bond Ratings

The United States' Census Bureau reports in its 2007 Statistical Abstract that these are the 4th quarter 2005 Bond Ratings for the six cities the Subcommittee requested:[12]

Cities Ranked by 2000 Population[13]	Standard & Poor's	Moody's	Fitch
New York, NY	A+	A1	A+
Los Angeles, CA	AA	Aa2	AA
San Jose, CA	AA+	Aa1	(NA)
San Francisco, CA	AA	Aa3	AA-
Seattle, WA	AAA	Aaa	(NA)
Oakland, CA	A+	A1	A+

http://www.census.gov/compendia/statab/state_local_govt_finances_employment/

New York City

New York's City Charter has long featured an elected Comptroller. In fact, the current office-holder is the 42nd person to hold the position. The office of Comptroller was apparently provided through ratification of the 1898 Charter, which was enacted with the creation of Greater New York through the consolidation of the five boroughs. Under the 1898 Charter, the Comptroller served as a member of the Board of Estimate, along with the Mayor, the City Council President and the presidents of the five boroughs. These officers were charged with acting as a sort of upper house for the New York City government, and preventing ill-considered financial decisions. The Comptroller, Mayor and Council President each held two votes as they were elected citywide.

The existence of an elected Comptroller and a Board of Estimate did not prevent the city from nearly entering bankruptcy in 1975. The State of New York stepped in, forming the Municipal Assistance Corporation (MAC) and the Emergency Financial Control Board to help the city live within its means.[14] In 1989, in the case of *Morris v. Board of Estimate*, the United States Supreme Court found that the absence of one person-one vote representation on the Board of Estimate (a result of the differing populations of the city's five boroughs) meant that body's composition

[12] See Appendix One for an explanation of the three municipal bond rating codes.
[13] See Appendix Two for a listing of the municipal bond ratings for the other large cities in the U.S.
[14] There are a number of excellent books on the NYC fiscal crisis, including Ester Fuchs' *Mayors and Money*, John Mollenkopf's *The Cost of Good Intentions*, and Martin Shefter's *Fiscal Crisis, Political Crisis*.

violated the Voting Rights Act. New York formed a Charter Revision Commission, which gave the document its most thorough review since 1898. The new 1991 Charter repealed the Board of Estimate although it left the elected Comptroller in place. The new charter, however, depended on a new Independent Budget Office to help the city prevent a recurrence of the 1975 fiscal crisis.

In 2004, the deficiencies remaining in the financial organization of New York City prompted the city's voters to pass yet another charter amendment revising the charter's budget provisions. The voters voluntarily added to the city charter the requirements that had been imposed upon the city by New York State in 1975. Based on passing this amendment, New York's City charter will now: 1) "Require that the City annually prepare a budget balanced in accordance with generally accepted accounting principles (GAAP), and end each year not showing a deficit in accordance with those principles;" 2) "Require that the Mayor annually prepare a four-year City financial plan, to be based on reasonable assumptions and modified on at least a quarterly basis, and that the plan provide for payment of the City's debts and a general reserve of at least $100 million to cover shortfalls;" 3) "Impose additional conditions on the Charter's current restrictions on short-term debt (which may be issued by the City to fund a projected deficit or in anticipation of the receipt of funds from taxes, revenues and bonds). These conditions generally limit the duration and amount of the short-term debt; and" 4) "Impose additional conditions on the annual audit of the City's accounts. These conditions relate to application of generally accepted auditing standards and access by auditors to records so that the audit may be issued within four months after the close of the City fiscal year."[15]

The city's present financial position appears to be strong, although many caution that the city has not addressed its long-term debt position even though the MAC experience is now about over, with the last of the NYC fiscal crisis bonds due to be retired in 2008.[16]

Los Angeles

Los Angeles has elected an official to take care of auditing the city ever since it enacted California's first home rule charter in 1889. Los Angeles' 1889 Charter featured many elected officials, and provided for four different elected fiscal officers--the Auditor, the Assessor, the Treasurer and the Tax & License Collector. Between electing these four officers citywide, as well as the Mayor, City Attorney, City Clerk, City Engineer, Street Superintendent, the Police Judges (not to mention the City Council and the Board of Education by wards) the electorate was very busy.

In 1925, the city enacted a new charter, which retained the election of the city's auditing official, the City Controller, but transferred the other functions once performed by elected officials to appointees (Clerk, Treasurer). (The 1925 Charter greatly reduced the number of elected officials; only the Mayor, City Attorney, City Controller and Board of Education would be elected citywide, and the City Council would be elected by districts.) The City Controller acted mainly as an accountant, authorizing the city's appointed Treasurer to disburse funds. There were over 400 amendments to the Los Angeles Charter between 1925 and 1999, but the provisions

[15] This is from the website: http://www.nyc.gov/html/charter/html/home/home.shtml

[16] New York State formed the Local Governments Assistance Commission (LGAC) recently, and this agency may have bought the remaining MAC bonds. According to one report, however, this raised the finance charge and extended the effective life of the obligation.

regarding the Los Angeles Controller's office remained virtually identical. Except for the imposition of a two-term limit, the officer remained for over seven decades an elected official with much the same duties as under the 1925 Charter.

The new Charter that Los Angeles enacted in 1999 did, however, enhance the Controller's authority, allowing the officer explicit authority to conduct performance audits, clarifying the officer's control over departments controlling their own funds, and allowing the officer to issue debt impact statements allowing taxpayers to assess the city's finances. Financial management of the city was an issue in 1999, and the improvements in the Controller's office were a selling point for the city's new 1999 Charter.[17]

San Jose

San Jose's present charter was enacted in 1965. The city's 1965 Charter changed the City Auditor from an officer elected by the people to an appointee of the City Council. At the end of the City Auditor's term, the new appointee would take office, and would serve for a four year term. Six members of the Council could dismiss the City Auditor prior to the end of the specified term, but only for cause: ("misconduct, inefficiency, incompetence, inability or failure to perform the duties of such office or negligence in the performance of such duties, provided it first states in writing the reasons for such removal and gives the incumbent an opportunity to be heard before the Council in his own defense"). The City Auditor was authorized to conduct complete audits, suggest improvements of the city's fiscal affairs and this officer reported to the Council.

In 1979, San Jose increased the size of its City Council from 7 members to 11 members (the mayor was counted as a member of the Council). Because of the increase in Council size, the city increased the number of members required to dismiss the City Auditor prior to the end of the officer's term. The margin necessary for early Auditor firing was raised from 6/7 to 10/11.

In 1980, San Jose granted the City Auditor authority over appointment, discipline and removal of the staff of his or her office, subject to the Charter's civil service provisions. The Charter also stated that appointments and removals in the Auditor's office were not to be dictated by the Mayor or Council, but that "the Council may express its views and fully and freely discuss with the City Auditor anything pertaining to the appointment and removal of such employees."

In 1986, San Jose greatly expanded the City Auditor's authority. That officer may now conduct performance audits, assess the management of city departments, offices and agencies, examine the adequacy of management information systems, determine whether management is meeting the objectives set for city policy, and even conduct special audits and investigations to find whether Council is being provided with accurate information. The City Auditor's personnel powers were also enhanced, allowing the officer to employ professional and technical employees exempt from civil service. Finally, as a check upon the City Auditor, the Council must employ an independent audit firm to conduct performance audits of the City Auditor's office on a bi-annual basis.

San Francisco

[17] See Appendix Three for a comparison of the language before and after the 1999 revisions.

San Francisco is unique among the cities covered in this survey because it is a city-county. In 1856, California passed a Consolidation Act, which unified the city and county of San Francisco into one entity. Because San Francisco was originally a county too, and California counties typically elect financial officers, it is not surprising that the city elected financial officers under its 1856 Consolidation Act, as it would under its 1900 home rule charter.

In its 1900 Charter, San Francisco provided for an 18-member Board of Supervisors elected at-large, as well as a mayor and 11 other officials elected citywide. In terms of finance, San Francisco elected four officers—the Auditor, the Treasurer, the Tax Collector and the Assessor However, in 1931, San Francisco voters ratified a new charter under which its Controller would be an appointed official. The Controller was to be the successor of the Auditor, and wield the powers typical of a County Auditor under California law. The Controller was to be a Mayoral appointee, subject to confirmation and approval by the Board of Supervisors. The Controller could only be removed by a two-thirds vote of the Supervisors. The Controller was to act as an accountant, but also to audit the accounts of all departments, upon Mayoral request.

In 1996, the Controller was awarded a ten-year term, although the remainder of the provisions regarding appointment and removal of this officer were kept the same.

In 2003, San Francisco changed its charter to strengthen the audit functions of the Controller. Under the terms of Appendix F to the Charter, the Controller is now authorized to perform management audits, performance audits, service audits, etc. The officer holds extensive audit authority.[18]

Seattle

Seattle is presently operating under the charter their city voters enacted in 1946. The 1946 charter originally provided for an elected Comptroller and an elected Treasurer. In 1991, the voters consolidated the city's finance functions from these two officers, as well as the mayor's budget office, into a single Department of Finance. This Department was to be headed by a mayoral appointee. The same charter amendment also created a new officer, the Auditor, who would be appointed by the chair of the City Council's Finance Committee to serve for a six-year term. This officer could be removed for cause by a majority of the City Council.

The Auditor is not explicitly granted charter authority to conduct performance audits or other such reviews. However, since the officer may "perform such other duties as are prescribed by law", the City Council can request more aggressive kinds of audits if the legislators so desire.

In 2006, the term of the Auditor was shortened from six years to four years, so that the officer's term would coincide with that of the city's elected officials. In addition, the charter was amended to provide that the Auditor would be appointed by a majority of the City Council rather than the chair of its Finance Committee.

Oakland

[18] See Appendix Four for the San Francisco Charter's 2003 provisions.

Oakland enacted a new charter in 1969. The document provided for a City Auditor, who would be nominated and elected the same way as the Mayor. The City Auditor was required to be a city resident for at least four years before being nominated for the position. This officer was to audit the books of all departments and agencies, to recommend accounting improvements to the Manager, and to report where the Manager did not comply with requests to adopt GAAP.

In 1979, professionalism apparently became an issue, as Oakland amended the Auditor-related provisions of the charter to reduce the residency requirement from 4 years to 30 days. In addition, the officer was required to be certified by the California State Board of Accountancy as a CPA or by the Institute of Internal Auditors as a Certified Internal Auditor.

In 1996, Oakland again amended the Auditor-related provisions of the charter. The authority of the officer was increased greatly. For example, the Auditor is now mandated to conduct performance audits of all departments.

In 2004, the Oakland charter was amended to set parameters upon the salary of the City Auditor. The salary "shall be not less than 70% nor more than 90% of the average salaries of City Auditors of California cities within the three immediate higher and the three immediate lower cities in population to Oakland." There were a number of changes to the Oakland Charter's provisions for the salaries of elected officials, including the Mayor, Council members and City Attorney. They were all part of Measure P, which institutionalized Oakland's strong mayor-council charter.

City Comparisons

All of these cities appear to have performed reasonably well in recent years, judging from their CAFRs and the ratings of their municipal bonds by the three major indices—Standard & Poors, Moody's and Fitch's.

In the research I conducted through their city newspapers, academic literature, websites, charter ballot arguments, and other sources, it appears that the city's choice of which mechanism to employ for the audit function was not particularly significant for each city's overall economy. In fact, national trends such as the 1970s era downturn and the early 1990s recession seem to have affected cities much more than their city charter's auditing system. Occasionally, an ephemeral scandal within a city or a power struggle between officials seems to have worked its way into the charter reform struggle. However, the larger economy of each city, which affected city revenues and expenditures on many levels, seems to have played the most important role in explaining their city's performance. The kind of financial management practices which brought trouble to New York City in the days of stagflation might not cause a ripple in the stronger economy that the Big Apple enjoys today. However, as a number of people are warning, New York City has structural problems which could bring dire results if the national economy declines.

San Diego is itself a case in point. In 1997, the City of Los Angeles paid the Government Finance Officers Association to do a report on the finance function. San Diego was a model of good financial management at the time. The city outperformed many California cities, according to the ratings the GFOA produced. In fact, when compared to the cities surveyed above, only New York City outperformed

San Diego in terms of the percentage of total general expenditures dedicated to the costs of financial administration.[19]

Philadelphia was not one of the cities surveyed above, and yet its experience is instructive. The elected Controller is granted extensive audit authority, and yet the city's bond ratings are not impressive. The Philadelphia Home Rule Charter is seen as a strong mayor model, and in some years the city's performance has worked to illustrate its promise. However, at present, the city is not hailed as a model of good financial management. Perhaps this is because Philadelphia's economy is affected by more than its charter's financial system. It is important to point out that a proper financial structure is necessary, but cannot serve as the number one predictor of how impressive a city's CAFR will be.

[19] The GFOA only examined the finances of cities over 500,000 population in 1994. As Oakland was not that large in 1994, it was not included in the survey. See James L. Chan and Rowan A. Miranda's "Organizing the Finance Function for the City of Los Angeles of the 21st Century: A Report to the Los Angeles Charter Reform Commission," GFOA Research Center, Chicago, IL, January 7, 1997.

APPENDIX ONE: Bond Ratings System

Fitch	Moody's	Standard & Poor's
AAA	Aaa	AAA
AA+	Aa1	AA+
AA	Aa2	AA
AA-	Aa3	AA-
A+	A1	A+
A	A2	A
A-	A3	A-
BBB+	Baa1	BBB+
BBB	Baa2	BBB
BBB-	Baa3	BBB-
BB+ (generally considered below investment grade)	Ba1 (generally considered below investment grade)	BB+ (generally considered below investment grade)
BB	Ba2	BB
BB-	Ba3	BB-
B+	B1	B+
B	B2	B
B-	B3	B-
CCC+	Caa1	CCC+
CCC	Caa2	CCC
CCC-	Caa3	CCC-
CC+	Ca1	CC+
CC	Ca2	CC
CC-	*	CC-
C+	C1	C+
C	C	C
C-	*	C-
D	*	D

http://www.philadelphiacontroller.org/bonds.aspx

APPENDIX TWO: 2005 Bond Ratings for Large U.S. Cities, Including San Diego

Table 434. **Bond Ratings for City Governments by Largest Cities: 4th quarter, 2005**

Cities Ranked by 2000 Population	Standard & Poor's	Moody's	Fitch
New York, NY	A+	A1	A+
Los Angeles, CA	AA	Aa2	AA
Chicago, IL	AA-	Aa3	AA
Houston, TX	AA-	Aa3	AA-
Philadelphia, PA	BBB	Baa1	(NA)
Phoenix, AZ	AA+	Aa1	(NA)
San Diego, CA	**	A3	BBB+
Dallas, TX	AA+	Aa1	(NA)
San Antonio, TX	AA+	Aa2	(NA)
Detroit, MI	BBB	Baa2	(NA)
San Jose, CA	AA+	Aa1	(NA)
Indianapolis, IN	AAA	(NA)	(NA)
San Francisco, CA	AA	Aa3	AA-
Jacksonville, FL	**	Aa2	(NA)
Columbus, OH	AAA	Aaa	(NA)
Austin, TX	AA+	Aa2	(NA)
Baltimore, MD	A+	A1	A+
Memphis, TN	A+	A1	AA-
Milwaukee, WI	AA	Aa2	AA+
Boston, MA	AA	Aa1	AA
Washington, DC	A+	A2	(NA)
El Paso, TX	AA	Aa3	(NA)
Seattle, WA	AAA	Aaa	(NA)
Denver, CO	AA+	Aa1	(NA)
Nashville-Davidson, TN	AA	Aa2	(NA)
Charlotte, NC	AAA	Aaa	AAA
Fort Worth, TX	AA+	Aa1	(NA)
Portland, OR	**	Aaa	(NA)
Oklahoma City, OK	AA	Aa2	(NA)
Tucson, AZ	AA	Aa3	(NA)
New Orleans, LA	B	Ba1	(NA)
Las Vegas, NV	AA-	Aa3	(NA)
Cleveland, OH	A	A2	A+

Long Beach, CA	AA-	Aa3	(NA)
Albuquerque, NM	AA	Aa3	AA
Kansas City, MO	AA	Aa3	(NA)
Fresno, CA	AA-	A1	(NA)
Virginia Beach, VA	AA+	Aa1	AA+
Atlanta, GA	AA-	Aa3	AA-
Sacramento, CA	AA	Aa2	(NA)
Oakland, CA	A+	A1	A+
Mesa, AZ	AA-	A1	(NA)
Tulsa, OK	AA	Aa2	(NA)
Omaha, NE	AAA	Aaa	(NA)
Minneapolis, MN	AAA	Aa1	(NA)
Honolulu, HI	AA-	Aa2	AA
Miami, FL	A+	A3	(NA)
Colorado Springs, CO	AA	Aa3	(NA)
St Louis, MO	A-	A3	A-
Wichita, KS	AA	Aa2	(NA)
Santa Ana, CA	**	(NA)	(NA)
Pittsburgh, PA	BBB-	Baa3	BBB
Arlington, TX	AA	Aa2	(NA)
Cincinnati, OH	AA+	Aa1	(NA)
Anaheim, CA	AA	Aa2	(NA)
Toledo, OH	A	A3	(NA)
Tampa, FL	A	Aa3	(NA)
Buffalo, NY	BBB-	Baa3	(NA)
St Paul, MN	AAA	Aa2	AA+
Corpus Christi, TX	A+	A1	AA-
Aurora, CO	AA	Aa2	(NA)
Raleigh, NC	AAA	Aaa	AAA
Newark, NJ	AA	Baa2	(NA)
Lexington-Fayette, KY	AA+	(NA)	(NA)
Anchorage, AK	**	Aa3	(NA)
Louisville, KY	AA+	Aa2	(NA)
Riverside, CA	A+	(NA)	(NA)
St Petersburg, FL	**	(NA)	(NA)
Bakersfield, CA	**	Aa3	(NA)
Stockton CA	A+	A1	(NA)
Birmingham, AL	AA	Aa3	AA-
Jersey City, NJ	BBB	Baa3	(NA)
Norfolk, VA	AA	A1	AA
Baton Rouge, LA	**	(NA)	(NA)

Hialeah, FL	**	(NA)	(NA)
Lincoln, NE	AAA	Aaa	(NA)
Greensboro, NC	AAA	Aaa	AAA
Plano, TX	AAA	Aaa	(NA)
Rochester, NY	AA	A2	(NA)

SYMBOLS
NA = Not available
** = Not reviewed.

Source:http://www.census.gov/compendia/statab/state_local_govt_finances_employment/

APPENDIX THREE: Comparison of L.A. Charter Provisions, Pre- and Post-1999

1998 Los Angeles Charter

"Sec. 46.
The Controller shall be the auditor and general accountant of the City and shall exercise a general supervision over the accounts of all officers, boards, and employees of the City charged in any manner with the receipt, collection or disbursement of the money of the City. (Added, 1925.)

Sec. 47.
(1) The Controller shall have power to prescribe the method of installing, keeping and rendering all accounts of the several officers, boards or employees of the City; provided, however, that any change of the system of accounting shall first be authorized by the Council.

(2) He shall keep in his office a complete set of accounts which shall show at all times the financial condition of the City, the state of each fund, the source from which all money was derived and for what purposes all money has been expended.

(3) He shall, on application of any person indebted to the City, or for any person holding money payable into the City treasury and desiring to pay money thereinto, certify to the Treasurer the amount thereof, in which fund it shall be deposited and by whom to be paid. He shall, upon the deposit of evidence of the receipt by the Treasurer of money paid into the City treasury charge the Treasurer with the amount so received.

(4) He shall audit all accounts and money coming into the hands of the Treasurer and shall maintain a reconciliation between all accounts kept in the books in the office of the Treasurer with the accounts kept in the books in his own office, and shall from time to time verify the condition of all funds in the hands of the Treasurer, and shall report to the Mayor and Council thereon.

(5) He shall keep a register of demands, showing the fund upon which they are drawn, the number, in whose favor, for what service, the appropriation applicable to the payment thereof, when the liability accrued and the authority for same.
(6) He shall allocate among the several respective funds all public money at any time in the City treasury not by law or ordinance otherwise specifically allocated and appropriated, and forthwith notify the Treasurer of such allocation or appropriation.

(7) He shall report to the Mayor and Council, at times established by law, the condition of each fund in the books of his office, and shall make such other or special reports as the Mayor or Council may from time to time request. (Amended, 1973.)

(8) He shall audit and approve before payment all demands drawn on the several funds of the City and keep a record of the same in accordance with any provisions made by law or ordinance or by this Charter.

(9) He shall inspect and audit the books, accounts, funds and securities of every person charged in any way with the safekeeping or disbursement of public money or securities.

(10) He shall have power to maintain each fund on a parity with its obligations at all times by transferring from the reserve fund as a loan to any fund which may become depleted through tardy receipt of revenues. He shall, in all cases, upon receipt of revenues sufficient to make such allocation as will restore each such fund to parity, retransfer the amount of such loan to the reserve fund.

(11) Prior to his approval of any demand therefor, he may, in addition to other inspection provided, make inspection as to the quality, quantity and condition of services, labor, materials, supplies or equipment received by any officer or department of the City. If, in his opinion, any demand is not a legal demand, he shall withhold approval of the same, and immediately file such demand, together with his action thereon and the reasons therefor, with the Council for instructions thereon, as elsewhere in this Charter provided.

(12) He shall keep a record and have custody of all official bonds except the bond of the Controller, which shall be filed with the City Clerk, and shall have charge of the placing and renewal of all corporate surety bonds of officers or employees; provided, however, that the reliability of corporate sureties shall be first subject to the approval of the Council.

(13) He shall countersign and deliver to the proper officer all licenses other than building permits issued by the City.

(14) He may suggest plans for the improvement and management of the revenues of the City. (Sec. Added, 1925.)

1999 Los Angeles Charter:

CONTROLLER

Sec. 260. Auditor and General Accountant.
The Controller shall be the auditor and general accountant of the City and shall exercise a general supervision over the accounts of all offices, departments, boards and employees of the City charged in any manner with the receipt, collection or disbursement of the money of the City. The Controller shall be elected as provided in Section 202.

Sec. 261. Powers and Duties.
The Controller shall:

(a) appoint assistants, deputies, clerks and other persons as the Council shall prescribe by ordinance;

(b) prescribe the method of keeping all accounts of the offices, departments, boards or employees of the City in accordance with generally accepted accounting principles, except that any change of the system of accounting shall first be authorized by the Council;

(c) regularly review the accounting practices of offices and departments and upon finding serious failings in accounting practices, be empowered to take charge of the accounting function, and thereafter assist the office or department in implementing appropriate accounting standards and practices;

(d) maintain a complete set of accounts which shall be deemed the official books and accounts of the City, which shall show at all times the financial condition of the City, the state of each fund, including funds of departments responsible for managing their own funds, the source from which all money was derived and for what purposes all money has been expended;

(e) in compliance with generally accepted government auditing standards, audit all departments and offices of the City, including proprietary departments, where any City funds are either received or expended; be entitled to obtain access to all department records and personnel in order to carry out this function; establish an auditing cycle to ensure that the performance, programs and activities of every department are audited on a regular basis, and promptly provide completed audit reports to the Mayor, Council, and City Attorney and make those reports available to the public;

(f) maintain a reconciliation between the accounts in all offices and departments with the accounts in the Controller's office, and from time to time, verify the condition of all City funds in the City Treasury, and report to the Mayor and Council thereon;

(g) allocate among the several respective funds all public money at any time in the City Treasury not otherwise specifically allocated and appropriated by law or ordinance, and promptly notify the Treasurer of the allocation or appropriation;

(h) report to the Mayor and Council, at times established by law, the condition of each fund, and make other reports as the Mayor or Council requests;

(i) maintain each fund on a parity with its obligations at all times by transferring from the Reserve Fund as a loan to any fund which may become depleted through tardy receipt of revenues, and upon receipt of revenues sufficient to make an allocation as will restore each fund to parity, retransfer the amount of the loan to the Reserve Fund;

(j) monitor the level of debt incurred by the City and report periodically to the Mayor and Council on City debt; and

(k) conduct performance audits of all departments and may conduct performance audits of City programs, including suggesting plans for the improvement and management of the revenues and expenditures of the City. Nothing in this subsection shall preclude the Mayor or Council from conducting management studies or other review of departmental operations.

APPENDIX FOUR: San Francisco Charter provisions on the Controller's Authority

"F1.100. FINDINGS.
(a) City residents rely upon the government of the City and County to deliver many important services affecting the health, vitality and economy of San Francisco. These include services related to the maintenance and cleanliness of streets and parks, health care, emergency services, transportation and public works. Recognizing the difficult economic times the City faces, preservation and enhancement of such services can be achieved only by ensuring that City services are delivered in an efficient, cost- effective manner, and that government waste and unnecessary bureaucracy are curtailed to the greatest extent possible.
(b) It is often difficult for individual San Franciscans to judge the effectiveness and efficiency of local government in providing direct services to residents because of the size and complexity of City government. Consistent with the goals of open government, City government should establish tools to enable residents to assess the effectiveness and efficiency of City services; to compare the City's progress in delivering such services to that of other cities, counties and government agencies; and, where appropriate, to adopt "best practices" used in other jurisdictions when consistent with the goals of San Francisco residents.
(c) The San Francisco Controller is uniquely situated to provide objective, rigorous measurement of City service levels and effectiveness because the Controller is already charged with assessment of departmental performance and fiscal soundness. In addition, the Controller is appointed to a ten-year term, and therefore is sufficiently independent to render impartial assessments of the City's provision of public services.
(d) Therefore, this Charter Amendment:
(1) Establishes the Controller as the City Services Auditor, with the authority to conduct independent management and performance audits of departments providing services to San Francisco residents;
(2) Instructs the Controller/City Services Auditor to publish comparisons of the performance of San Francisco departments, the services they deliver, and the outcomes they achieve with other public agencies;
(3) Requires that the Controller/City Services Auditor perform comprehensive financial and performance audits of selected City departments each year;
(4) Mandates that the Controller/City Services Auditor review standards for street and park maintenance in consultation with responsible City departments and perform an annual Clean Streets/Clean Parks audit to track whether these standards are met;
(5) Provides the Controller/City Services Auditor the authority to review Citywide standards for government contracting processes and the development of "Requests For Proposals" to ensure that the selection process is fair and unbiased;
(6) Prohibits conflicts of interest in the auditing process by preventing companies that have participated in departmental operations from acting as outside auditors, requiring that all employees participating in audits be designated confidential employees for labor-relations purposes, and permitting the Controller to obtain outside independent assistance when in-house employees are subject to potential conflicts of interest;
(7) Requires the Controller/City Services Auditor to administer and publicize a whistleblower hotline and website for citizens and employees to report wrongdoing, waste, inefficient practices and poor performance in City government and service delivery;

(8) Authorizes the Citizens' General Obligation Bond Oversight Committee to also function as an independent Citizens Audit Review Board to advise the Controller/City Services Auditor, to recommend departments in need of comprehensive audit, and to review citizen complaints received through the whistleblower program; and
(9) Provides a dedicated source of revenue equivalent to two-tenths of one percent of the budget of the City and County of San Francisco.
(Added November 2003)

F1.101. CITY SERVICES AUDITOR; SERVICES AUDIT UNIT.
(a) In addition to the other duties prescribed by this Charter, the Controller shall perform the duties of a City Services Auditor, responsible for monitoring the level and effectiveness of services provided by the government of the City and County of San Francisco to the people of San Francisco. The City Services Auditor shall establish and maintain a Services Audit Unit in the Controller's Office to ensure the financial integrity and improve the overall performance and efficiency of City government. The Services Audit Unit shall review performance and cost benchmarks developed by City departments in consultation with the Controller and based on their departmental efficiency plans under Chapter 88 of the Administrative Code, and conduct comparisons of the cost and performance of San Francisco City government with other cities, counties and public agencies performing similar functions. In particular, the Services Audit Unit shall assess:
(1) Measures of workload addressing the level of service being provided or providing an assessment of need for a service;
(2) Measures of efficiency including cost per unit of service provided, cost per unit of output, or the units of service provided per full time equivalent position; and
(3) Measures of effectiveness including the quality of service provided, citizen perceptions of quality, and the extent a service meets the needs for which it was created.
(b) The service areas for which data is collected and comparisons conducted shall include, but not be limited to:
(1) The cleanliness and condition of streets, sidewalks, and the urban environment and landscape;
(2) The performance of other public works and government-controlled public utilities, including water and clean water programs;
(3) Parks, cultural and recreational facilities;
(4) Transportation, as measured by the standards set out in Charter Section 8A.103, provided, however, that primary responsibility for such assessment shall continue to be exercised by the Municipal Transportation Agency pursuant to Charter Section 8A.100 et seq.;
(5) The criminal justice system, including the Police Department, Juvenile and Adult Probation Departments, Sheriff, District Attorney and Public Defender;
(6) Fire and paramedic services;
(7) Public health and human services;
(8) City management; and,
(9) Human resources functions, including personnel and labor relations.
(c) The information obtained using the service measurement standards set forth above shall be compiled on at least an annual basis, and the results of such benchmark studies, as well as comparative data, shall be available on the City's website.
(Added November 2003)

F1.102. STREET, SIDEWALK, AND PARK CLEANING AND MAINTENANCE.

(a) The Services Audit Unit shall conduct annually a performance audit of the City's street, sidewalk, and public park maintenance and cleaning operations. The annual audit shall:
(1) Include quantifiable, measurable, objective standards for street, sidewalk, and park maintenance, to be developed in cooperation and consultation with the Department of Public Works and the Recreation and Park Department;
(2) Based upon such measures, report on the condition of each geographic portion of the City;
(3) To the extent that standards are not met, assess the causes of such failure and make recommendations of actions that will enhance the achievement of those standards in the future;
(4) Ensure that all bond funds related to streets, parks and open space are spent in strict accordance with the stated purposes and permissible uses of such bonds, as approved by the voters.
Outside of the audit process, the City departments charged with cleaning and maintaining streets, sidewalks, and parks shall remain responsible for addressing individual complaints regarding specific sites, although the Controller may receive and investigate such complaints under Section F1.107.
(b) In addition, all City agencies engaged in street, sidewalk, or park maintenance shall establish regular maintenance schedules for streets, sidewalks, parks and park facilities, which shall be available to the public and on the department's website. Each such department shall monitor compliance with these schedules, and shall publish regularly data showing the extent to which the department has met its published schedules. The City Services Audit Unit shall audit each department's compliance with these requirements annually, and shall furnish recommendations for meaningful ways in which information regarding the timing, amount and kind of services provided may be gathered and furnished to the public.
(Added November 2003)

F1.103. MANAGEMENT PRACTICES.
The City Services Audit Unit shall:
(1) Conduct and publish an annual review of management and employment practices, including City policies and MOU provisions, that either promote or impede the effective and efficient operation of City government;
(2) Identify the top five City departments by workers compensation claims, list the cost of these claims, and recommend ways to reduce both workplace injuries and improper claims;
(3) Identify the top five departments by overtime expenditures and report on the cause and potential mitigations for any excessive overtime spending; and,
(4) Conduct best practices reviews and other studies and assist departments in implementing their findings.
(Added November 2003)

F1.104. PERFORMANCE AUDITS.
The City Services Audit Unit shall conduct periodic, comprehensive financial and performance audits of City departments, services, and activities. Except as provided in Section F1.102, the Controller shall have discretion to select, on a rotating basis, departments, services, and activities for audit, giving priority to matters affecting direct services to the residents of the City and County of San Francisco. In selecting audit subjects, the Controller shall give preference to requests for performance audits made by the Audit Review Board, the Mayor, the Board of Supervisors, department heads, and commissions; provided, however, that absent extraordinary

circumstances, no department, activity, or service shall be subject to repeated audits in two successive years.
(Added November 2003)

F1.105. AUDIT RESULTS.
(a) Before making public any portion of any draft, notes, preliminary or final report relating to the operations or activities of a City officer or agency, the Controller shall deliver a copy of the draft report to any such officer, and to the head of any agency discussed in such report and provide the officer and agency, in writing, with a reasonable deadline for their review and response. The Controller shall include in any report, or portion thereof that is made public, a copy or summary of all such officerand agency responses. In addition, the audit shall include an analysis of the anticipated costs and/or savings of any recommendations contained in the report.
(b) The Controller shall publish the results of all final performance audits and a summary of agency responses, shall deliver copies of such audits to relevant department heads, Audit Review Board, Mayor, City Attorney, Board of Supervisors, San Francisco Civil Grand Jury, and San Francisco Public Library, and shall make the audits available on the City's website. Each department subject to recommendations by the Controller shall include with its next two annual budget requests following such audit a report onthe status of the Controller's recommendations. In particular, the report shall include:
(1) the Controller's final audit recommendations;
(2) a plan to address the Controller's findings and to implement the Controller's recommendations;
(3) any costs or savings reflected in the proposed budget attributable to implementation of Controller recommendations; and
(4) a statement of the recommendations that the department does not intend to implement and the basis of the department head's determination not to adopt the Controller's recommendation.
(c) To avoid conflicts of interest, all employees engaged in preparation of audits shall be designated as confidential employees. If the Controller determines that any member of the regular audit staff is unable to participate in an audit due to a potential conflict of interest, or as a result of the employee's collective bargaining representation, the Controller shall have the option of assigning other employees regardless of civil service job description, hiring outside experts, or contracting for such services with an outside individual or agency.
(Added November 2003)

F1.106. OVERSIGHT OF CONTRACTING PROCEDURES.
The Controller shall have the duty to perform regular oversight of the City's contracting procedures, including developing model criteria and terms for City Requests for Proposals (RFPs), auditing compliance with City contracting rules and procedures, and, where appropriate, investigating cases of alleged abuse or conflict of interest. Nothing in this Section shall be construed to alter the existing jurisdiction of City departments and agencies with respect to contracting. Should the Controller find that there has been an abuse or conflict of interest, he or she shall refer that finding to the Ethics Commission, the District Attorney, and the City Attorney for possible enforcement action.
(Added November 2003)

F1.107. CITIZENS' COMPLAINTS; WHISTLEBLOWERS.
(a) The Controller shall have the authority to receive individual complaints concerning the quality and delivery of government services, wasteful and inefficient

City government practices, misuse of City government funds, and improper activities by City government officers and employees. When appropriate, the Controller shall investigate and otherwise attempt to resolve such individual complaints except for those which:
(1) another City agency is required by federal, state, or local law to adjudicate,
(2) may be resolved through a grievance mechanism established by collective bargaining agreement or contract,
(3) involve allegations of conduct which may constitute a violation of criminal law, or
(4) are subject to an existing, ongoing investigation by the District Attorney, the City Attorney, or the Ethics Commission, where either official or the Commission states in writing that investigation by the Controller would substantially impede or delay his, her, or its own investigation of the matter.
If the Controller receives a complaint described in items (1), (2), (3), or (4) of this paragraph, the Controller shall advise the complainant of the appropriate procedure for the resolution of such complaint.
(b) If the Controller receives a complaint alleging conduct that may constitute a violation of criminal law or a governmental ethics law, he or she shall promptly refer the complaint regarding criminal conduct to the District Attorney or other appropriate law enforcement agency and shall refer complaints regarding violations of governmental ethics laws to the Ethics Commission and the City Attorney. Nothing in this Section shall preclude the Controller from investigating whether any alleged criminal conduct also violates any civil or administrative law, statute, ordinance, or regulation.
(c) Notwithstanding any provision of this Charter, including, but not limited to Section C3.699-11, or any ordinance or regulation of the City and County of San Francisco, the Controller shall administer a whistleblower and citizen complaint hotline telephone number and website and publicize the hotline and website through press releases, public advertising, and communications to City employees. The Controller shall receive and track calls and emails related to complaints about the quality and delivery of government services, wasteful and inefficient City government practices, misuse of government funds and improper activities by City government officials, employees and contractors and shall route these complaints to the appropriate agency subject to subsection (a) of this Section. The Board of Supervisors shall enact and maintain an ordinance protecting the confidentiality of whistleblowers, and protecting City officers and employees from retaliation for filing a complaint with, or providing information to, theController, Ethics Commission, District Attorney, City Attorney or a City department or commission about improper government activity by City officers and employees. The City may incorporate all whistleblower functions set forth in this Charter or by ordinances into a unified City call center, switchboard, or information number at a later time, provided the supervision of the whistleblower function remains with the Controller and its responsibilities and function continue unabridged.
(Added November 2003)

F1.108. CUSTOMER SERVICE PLANS.
The Controller shall assess the progress of City departments' compliance with Charter Section 16.120 and any implementing ordinances requiring City departments to prepare effective customer service plans. The Controller shall make recommendations to departments to improve the effectiveness of such plans. The Controller shall report to the Board of Supervisors and Mayor the failure of any department to comply substantially with the Controller's recommendations regarding customer service plans.

(Added November 2003)

F1.109. LEGISLATION.
The Controller may propose legislation to the Board of Supervisors and the Mayor to improve City programs and services and to make the delivery of such programs and services more efficient.
(Added November 2003)

F1.110. ACCESS TO RECORDS; PRELIMINARY REPORTS.
(a) The Controller shall have timely access to all records and documents the Controller deems necessary to complete the inquiries and reviews required by this Appendix. If a City officer, employee, agency, department, commission, or agency does not comply with the Controller's request for such records and documents, the Controller may issue a subpoena. The provisions of this subdivision shall not apply to those records and documents of City agencies for which a claim of privilege has been properly and appropriately raised, or which are prepared or maintained by the City Attorney, the District Attorney, or the Ethics Commission for use in any investigation authorized by federal, state law or local law.
(b) Notwithstanding any other provision of this Charter, or any ordinance or regulation of the City and County of San Francisco, and except to the extent required by state or federal law, all drafts, notes, preliminary reports of Controller's benchmark studies, audits, investigations and other reports shall be confidential.
(Added November 2003)

F1.111. CITIZENS AUDIT REVIEW BOARD.
In addition to its duties under Article V of Chapter 5 of the Administrative Code, the Citizens' General Obligation Bond Oversight Committee shall serve as a Citizens Audit Review Board. In its role as the Review Board, the Oversight Committee shall provide advisory input to the Controller on matters pertaining to the functions set forth in this Appendix, and, in particular, shall:
(1) Review the Controller's service standards and benchmarks to ensure their accuracy and usefulness;
(2) Review all audits to ensure that they meet the requirements set forth above;
(3) Subject to appropriate rules ensuring the confidentiality of complainants, as well as the confidentiality of complaints referred to and handled by the District Attorney, the City Attorney, and the Ethics Commission, review citizen and employee complaints received through the whistleblower/complaint hotline and website and the Controller's disposition of those complaints; and
(4) Where it deems appropriate, hold public hearings regarding the results of benchmark studies and audits to encourage the adoption of "best practices" consistent with the conclusions of the studies and audits. An audio or video recording of such hearings shall be made available for public inspection free of charge.
(Added November 2003)

F1.112. OUTSIDE EXPERTS.
(a) Notwithstanding any other provision of this Charter or any ordinance or regulation of the City and County of San Francisco, the Controller shall be authorized to contract with outside, independent experts to assist in performing the requirements of this Appendix. In doing so, the Controller shall make good faith efforts as defined in Chapter 12D of the Administrative Code to comply with the provisions of Chapters 12 et seq. of the Administrative Code, but shall not be subject to the approval processes of other City agencies. The Controller shall submit an annual report to the Board of Supervisors summarizing any contracts issued

pursuant to this Section and discussing the Controller's compliance with Chapters 12 et seq. Contracts issued by the Controller pursuant to this Section shall be subject, where applicable, to the requirements of Section 9.118.
(b) No outside expert or firm shall be eligible to participate or assist in an audit or investigation of any issue, matter, or question as to which that expert or firm has previously rendered compensated advice or services to any individual, corporation or City department other than the Controller. The Controller shall adopt appropriate written regulations implementing this provision, and shall incorporate this requirement in all written contracts with outside experts and firms utilized pursuant to this Section.
(Added November 2003)

F1.113. CONTROLLER'S AUDIT FUND.
Notwithstanding any other provision of this Charter, the Mayor and Board of Supervisors shall be required to budget an amount equal to at least two- tenths of one percent (0.2%) of the City's overall budget, apportioned by fund and excluding bond related debt, to implement this provision. This amount shall be referred to as the Controller's Audit Fund, and shall be used exclusively to implement the duties and requirements of this Appendix, and shall not be used to displace funding for the non-audit relatedfunctions of the Controller's Office existing prior to the date this provision is enacted. If the funds are not expended or encumbered by the end of the fiscal year, the balance in the fund shall revert to the General Fund or the enterprise funds where it originated.
(Added November 2003)

F1.114. OPERATIVE DATE; SEVERABILITY.
(a) This charter amendment shall be operative on July 1, 2004. This amendment shall not affect the term or tenure of the incumbent Controller.
(b) If any section, subsection, provision or part of this charter amendment or its application to any person or circumstances is held to be unconstitutional or invalid, the remainder of the amendment, and the application of such provision to other persons or circumstances, shall not be affected.
(Added November 2003)”

ATTACHMENT L
MEMORANDUM ON AUDIT COMMITTEE AND DELEGATION

Memorandum

To: Lisa Briggs
From: James Ingram
Re: Does the Creation of an Audit Committee Constitute a Delegation and thus Violate California Constitution's Article 11, Section 11?
Date: August 1, 2007

City Attorney representatives raised an important objection to the Subcommittee on Financial Reform's actions regarding an Audit Committee. Subcommittee staff objected to the City Attorney representative's interpretation of Article 11, Section 11.

Article 11, Section 11 of the California Constitution reads:

"§ 11. Delegation of local powers
(a) The Legislature may not delegate to a private person or body power to make, control, appropriate, supervise, or interfere with county or municipal corporation improvements, money, or property, or to levy taxes or assessments, or perform municipal functions." [Subsection (b) relates to deposit and investment of public funds, and has therefore been omitted because it is not relevant here.]

First of all, it is important to note that we are not discussing a legislative delegation here, but a delegation by the City Charter itself. The prohibition on the legislature is not necessarily valid as applied to cities acting according to their charters. The annotations for this Constitutional provision are available on LexisNexis, and they clearly indicate that the City Attorney representative's reading is an incorrect one.

In *Adams v. Wolff*, the court found that: "The prohibition of Art XI § 13, of delegation by the Legislature to any "special commission" power to perform any municipal function is a restraint on the Legislature's power to interfere with municipal affairs and in no way regulates what may be done by a municipal corporation by charter provision" ([Note that Art XI § 13 became Art XI § 11 in subsequent amendments of the state constitution] *Adams v Wolff* (1948) 84 Cal App 2d 435, 190 P2d 665).

In the case of *Wilson v Board of Supervisors*, the courts further amplified this finding: "The purpose of this section was to emancipate municipal governments from the authority and control formerly exercised over them by the Legislature" (*Wilson v Board of Supervisors* (1957, 3rd Dist) 154 Cal App 2d 101, 315 P2d 748).

To contend that an Audit Committee is illegal under the provisions of Article 11, Section 11 would be tantamount to declaring that virtually any commission to which a city charter delegates authority would be unconstitutional. Empirically, the City Attorney's argument appears ridiculous because most cities within the state of California would have some commission rendered problematic based on the interpretation that office has offered.

Staff would encourage Subcommittee members not to regard the provisions of California Constitution's Article 11, Section 11 as a requirement that the City's formation of an Audit Committee mandates any participation by City Council members upon such a committee, much less as a majority of its members.

JOHN **ADAMS** et al., Respondents, v. HARRY K. **WOLFF** et al., Appellants

Civ. No. 13556

Court of Appeal of California, First Appellate District, Division One

84 Cal. App. 2d 435; 190 P.2d 665; 1948 Cal. App. LEXIS 1216

March 19, 1948

SUBSEQUENT HISTORY: [***1] Appellants' Petition for a Hearing by the Supreme Court was Denied May 17, 1948. Shenk, J., and Schauer, J., Voted for a Hearing.

PRIOR HISTORY: APPEAL from a judgment of the Superior Court of the City and County of San Francisco. Pat R. Parker, Judge assigned.

Proceeding in mandamus, for an injunction and for declaratory relief with respect to rates of pay for certain municipal employees.

DISPOSITION: Affirmed. Judgment for petitioners affirmed.

HEADNOTES

CALIFORNIA OFFICIAL REPORTS HEADNOTES

CA(1) **(1) Municipal Corporations--Compensation--Mandamus.** --In a mandamus proceeding to compel the fixing of pay rates of certain employees of a chartered city, an award in their favor for retroactive pay found to be due them was properly made in the same proceeding.

CA(2) **(2) Id.--Charters--As Law of State.** --The provisions of a free-holders' charter operating under Const., art. XI, §§ 8, 8 1/2, have the force and effect of legislative enactments and are the supreme law of the state with respect to government of the chartered city.

CA(3) **(3) Id.--Charters--Validity.** --A provision of a freeholders' charter operating under Const., art. XI, §§ 8, 8 1/2, will not be held unconstitutional unless it can be clearly shown to be violative of the Constitution, and all doubts must be resolved in favor of constitutionality.

CA(4) **(4) Id.--Charters--Contents.** --A city charter adopted under the "home rule" provisions of the Constitution, like the Constitution itself, does not constitute a grant of power, but constitutes a limitation of power.

CA(5) **(5) Id.--Charters--Contents.** --The hiring and paying of municipal employees generally is not subject to or controlled by general laws. Hence a provision in a city charter regulating the rates of pay of certain municipal employees by reference to the rates established by bargaining between private employers and private employees is one for the "government" of the municipality authorized by Const., art. XI, § 8.

CA(6)**(6) Id.--Legislative Control--Delegation of Power to Perform Municipal Functions.** --A provision in a city charter requiring the civil service commission to regulate the rates of pay of municipal employees by reference to the rates established by collective bargaining in private employment is not an unlawful delegation of legislative powers to private persons, because the delegation here is effected not by a legislative body but by the organic law of the city.

CA(7)**(7) Id.--Charters--As Constitution.** --The charter of a city is comparable to the Constitution of the state and governed by the same principles.

CA(8)**(8) Id.--Legislative Control--Delegation of Power to Perform Municipal Functions.** --The prohibition of Const., art. XI, § 13, of the delegation by the Legislature to any "special commission" power to perform any municipal function is a restraint on the state Legislature's power to interfere with municipal affairs and in no way regulates what may be done by a municipal corporation by charter provision.

CA(9)**(9) Id.--Charters--Contents.** --The matters expressly authorized by Const., art. XI, § 8 1/2, to be dealt with by charters adopted pursuant to Const., art. XI, § 8, cover only a small part of the powers which may be set forth in a city charter under the latter section, and the fact that a matter does not appear among the express matters in § 8 1/2 is no basis for denying the power of a chartered city to deal with it.

CA(10)**(10) Id.--Employees--Compensation--As Municipal Affair.** --Since § 151.3 of the charter of the city and county of San Francisco, providing for regulation of rates of pay of certain municipal employees by reference to the rates fixed by collective bargaining in private employment, does not provide for collective bargaining by municipal employees, and since the fixing of salaries of municipal employees is a matter of municipal and not general concern, the provisions of § 151.3 are not affected by the exemption of public corporations from the application of Lab. Code, § 923, encouraging collective bargaining generally.

CA(11)**(11) Id.--Charters--Validity.** --It is the function of the courts not to pass upon the wisdom or policy of a charter provision, but simply to interpret it and to determine whether it violates a constitutional provision.

CA(12)**(12) Id.--Employees--Compensation--Fixing of Compensation.** --Section 151.3 of the charter of the city and county of San Francisco, providing for fixing the pay rates of certain municipal employees by adopting the rates established by collective bargaining in private employment in the same industry, was intended to give such public employees the same take home pay as that received by private employees in the same industry; the section therefore applies as well to premium pay for night shifts and to pay for holidays not worked as to the hourly wage itself.

COUNSEL: John J. O'Toole, City Attorney, and Walter A. Dold, Chief Deputy City Attorney, for Appellants.

Milton Marks and Morris Lowenthal for Respondents.

JUDGES: Peters, P. J. Ward, J., and Bray, J., concurred.

OPINION BY: PETERS

OPINION

[*437] [**667] The plaintiffs, all civil service employees of the defendant city and county and employed by it as automotive machinists and mechanics, by this proceeding in mandate, for an injunction and for declaratory relief, sought and secured an adjudication that under section 151.3 of the city and county charter they are entitled to receive rates of pay for their services identical with that received in this area in private employment by machinists and mechanics pursuant to collective bargaining agreements by [***2] such private employees with their private employers.

The controversy turns upon the constitutionality and proper construction of section 151.3 of the city and county charter as adopted in 1945 and amended in 1946. Prior to 1945, section 151 of the city and county charter contained the conventional provision that the board of supervisors should fix the salaries of all municipal employees after and on the basis of a comprehensive investigation and survey of wages paid in private and public employment for like service. In 1945, the board of supervisors submitted to the electorate a proposal to amend the charter by adding section 151.3 as a new section. This new section was adopted by the people at the November, 1945, election and has been approved by the Legislature. In 1946, an amendment to the new section was proposed to the electors, was adopted by the people, and was approved by the Legislature.

The first sentence of section 151.3 as adopted in 1945 was not changed by the 1946 amendment, is still in effect, and reads as follows: "Notwithstanding any of the provisions of § 151 or any other provisions of this charter, whenever any groups or crafts establish a rate of pay for [***3] such groups or crafts through collective bargaining agreements with employers [*438] employing such groups or crafts, and such rate is recognized and paid throughout the industry and the establishments employing such groups or crafts in San Francisco, and the civil service commission shall certify that such rate is generally prevailing for such groups or [**668] crafts in private employment in San Francisco pursuant to collective bargaining agreements, the board of supervisors shall have the power and it shall be its duty to fix such rate of pay as the compensations for such groups and crafts engaged in the city and county service."

It is this portion of the section that is involved in this proceeding. The 1946 amendment provides the procedure for carrying the 1945 amendment into effect. So far as pertinent here, it reads as follows: "The rate of pay so fixed by the board of supervisors shall be determined on the basis of rates of pay certified by the civil service commission on or prior to April 1st of each year and shall be effective July 1st following: provided, that the civil service commission shall review all such agreements as of July 1st of each year and certify [***4] to the board of supervisors on or before the second Monday of July any modifications in rates of pay established thereunder for such crafts or groups as herein provided. The board of supervisors shall thereupon revise the rates of pay for such crafts or groups accordingly and the said revised rates of pay so fixed shall be effective from July 1st of the fiscal year in which the said revisions are determined."

The plaintiffs are all civil service employees of defendant city and county. In addition, all of the plaintiffs are members of Local 1305 of the International Association of Machinists. It is admitted that at all times pertinent to this proceeding Local 1305

had collective bargaining agreements with all private employers in San Francisco employing automotive machinists, mechanics and fender and body workers, establishing, among other things, rates of pay for all employees in those crafts. It is also admitted that pursuant to such agreements, and from June 1, 1946, down to the date of trial (February, 1947), all private employers of mechanics of the types here involved were paid a fixed sum per week for day work on the basis of a work week consisting of five days, except for [***5] those weeks in which certain designated holidays (New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Admission Day, when celebrated in San Francisco, Thanksgiving Day and Christmas Day) might occur on a work day, in which weeks the same rate of pay was fixed for [*439] a four-day week, with the designated holiday off without loss of pay. It is further admitted that, pursuant to such collective bargaining agreements, increased rates of pay of 10 per cent to 15 per cent respectively were paid for work on the "night" and "midnight" shifts. Such agreements further provided that foremen were to receive 10 per cent in excess of the rates of pay fixed for journeymen.

The defendants, while paying its employees of the classes here involved the five-day week rate above mentioned for day work, with full knowledge of the other provisions of the collective bargaining agreements, have refused to pay its employees for the designated holidays on which they do not work, and have refused to pay the increased rates for the "night" and "midnight" shifts. Defendants concede that, if section 151.3 is constitutional, which they deny, plaintiff foremen are entitled to [***6] the added 10 per cent.

No useful purpose would be served in setting forth the provisions of the judgment in detail. Its legal effect was to uphold the constitutionality of section 151.3, and to allow to plaintiffs their claimed rights to holiday pay, increased rates on the two night shifts and increased rates for foremen. There is no doubt that the trial court fixed these allowances in exact accord with the provisions contained in the collective bargaining agreements between Local 1305 and all the private employers of its members in San Francisco. CA(1)**(1)** The judgment also directed the defendants from July 1, 1946, and thereafter, to pay to plaintiffs the difference between the actual wages paid and what such wages should have been under the collective bargaining agreements. If the judgment is otherwise correct, there can be no doubt of the propriety of thus awarding a money judgment in a *mandamus* proceeding where other grounds for the issuance of a writ of mandate exist. (*Sonnicksen* v. *Sonnicksen*, 45 Cal.App.2d 46 [113 P.2d 495]; *Murphy* v. *Sheftel*, 121 Cal.App. 533 [9 P.2d 568]; *Scannell* v. *Murphy*, 82 Cal.App.2d 814 [187 P.2d 790]; see cases [**669] [***7] collected 10 Cal.Jur. §§ 41 and 42, p. 496 et seq.)

On this appeal defendants' principal contentions are that section 151.3 of the charter is unconstitutional in that a municipality is not authorized "to adopt a charter provision which causes and permits the city and county to be governed by private persons *and to charter away its rights*; and if the provision is valid from the constitutional standpoint, it nevertheless violates the general laws of the state which are to the effect that as to public entities there shall be no collective [*440] bargaining. Furthermore, the contracts created by the provision with respect to the city and county, are against public policy and therefore void." (App. Op. Brief, p. 5.) It is also contended that the power to fix the "rate of pay," as those terms are used in section 151.3, relates only to the "basic" rate of pay. Based on this premise it is next contended that the premium pay for holidays and night work is not part of the "basic" rate of pay, but relates to "working conditions." Based on this interpretation

it is urged that the section, even if constitutional, has no application. None of these arguments is sound.

CA(2)**(2)** San Francisco is [***8] a chartered city operating under article XI, sections 8 and 8 1/2 of the Constitution. The provisions of such a charter have the force and effect of legislative enactments and are the supreme law of the state with respect to the government of such chartered cities. (*Dalton* v. *Lelande*, 22 Cal.App. 481 [135 P. 54]; *Stern* v. *City Council of Berkeley*, 25 Cal.App. 685 [145 P. 167]; *Bottoms* v. *Superior Court*, 82 Cal.App. 764 [256 P. 422]; *Tilden* v. *Blood*, 14 Cal.App.2d 407 [58 P.2d 381]; *Yosemite etc. Corp.* v. *State Bd. of Equal.*, 59 Cal.App.2d 39 [138 P.2d 39]; *Whitmore* v. *Brown*, 207 Cal. 473 [279 P. 447]; *Hermanson* v. *Board of Pension Commrs.*, 219 Cal. 622 [28 P.2d 21].) CA(3)**(3)** A provision of such a charter will not be held to be unconstitutional unless it can be clearly shown to be violative of the state Constitution, and all doubts must be resolved in favor of constitutionality. (*Bourland* v. *Hildreth*, 26 Cal. 161; *San Francisco* v. *Industrial Acc. Com.*, 183 Cal. 273 [191 P. 26]; *People* v. *Southern Pac. Co.*, 209 Cal. 578 [290 P. 25]; *Pacific Indemnity Co.* v. *Industrial Acc. Com.*, 215 Cal. [***9] 461 [11 P.2d 1, 82 A.L.R. 1170]; *People* v. *Western Fruit Growers*, 22 Cal.2d 494 [140 P.2d 13]; *Collins* v. *Riley*, 24 Cal.2d 912 [152 P.2d 169].) Defendants' contention to the contrary is not supported by reason or authority. CA(4)**(4)** It is also the law that a charter adopted under the "home rule" provisions of the Constitution, like the state Constitution itself, does not constitute a "grant" of power, but constitutes a "limitation" of power. (*Bank* v. *Bell*, 62 Cal.App. 320 [217 P. 538]; *Voorhees* v. *Morse*, 1 Cal.2d 179 [34 P.2d 153]; *West Coast Adver. Co.* v. *San Francisco*, 14 Cal.2d 516 [95 P.2d 138]; *People* v. *Carter*, 12 Cal.App.2d 105 [54 P.2d 1139]; *Murphy* v. *City of Piedmont*, 17 Cal.App.2d 569 [62 P.2d 614, 64 P.2d 399].)

[*441] CA(5)**(5)** Defendants base a rather vague argument on the language in section 8 of article XI authorizing cities of certain classes to "frame a charter for its own government." It is argued that such a city "may not frame a charter for its government by agreements between private employers and private employees; *and if the first paragraph of § 151.3 is held to be lawful and constitutional,* [***10] *the people of the city and county of San Francisco are now and will be governed by private individuals* having no city and county connections whatsoever." (App. Opr. Br. p. 8.) In other words, it is urged that by section 151.3 the city has taken from the board of supervisors the power to fix salaries and placed such power in the unions and private employers. Such a provision, so it is claimed, does not constitute a charter provision by a city "for its own government." The argument is rather hard to follow. In *City of Pasadena* v. *Charleville*, 215 Cal. 384, 389 [10 P.2d 745], it is said: "The hiring of employees generally by the city to perform labor and services in connection with its municipal affairs and the payment of the city's funds for services rendered to the city by its employees in the administration of its municipal affairs is not subject to or controlled by general laws." Thus, the hiring and paying of municipal employees is generally a "municipal affair" not subject to or controlled by general laws. This being [**670] so, it is too clear to require further comment that a charter provision like section 151.3, which regulates the rates of pay of certain municipal [***11] employees, is a provision for the "government" of the municipality within the meaning of section 8 of article XI of the Constitution.

CA(6)**(6)** The argument that section 151.3 unlawfully delegates powers to private employers and employees under the collective bargaining agreements is equally specious. The prohibition against delegating legislative powers restricts only a legislative body from delegating its legislative powers. It might be that the board of

supervisors of a chartered city could not lawfully adopt an ordinance similar to section 151.3. But section 151.3 is not an ordinance, it is a charter provision -- an enactment by the people amending the basic organic law of the city. CA(7)**(7)** The charter of a city is comparable to the Constitution of the state and governed by the same principles. (*Platt* v. *City and County of San Francisco*, 158 Cal. 74 [110 P. 304]; *Dalton* v. *Lelande*, 22 Cal.App. 481 [135 P. 54]; *Marculescu* v. *City Planning Com*., 7 Cal.App.2d 371 [46 [*442] P.2d 308].) The people of San Francisco, by adding section 151.3 to their "Constitution," have determined how the wages of certain public employees shall be paid, and have provided that the [***12] board of supervisors must adopt the rates so fixed. That is not an unlawful delegation any more than a similar provision applicable to the state in the state Constitution would constitute an unlawful delegation.

CA(8)**(8)** Somewhat similar to this argument is the contention that section 151.3 violates section 13 of article XI of the state Constitution. That section provides, in part: "The legislature shall not delegate to any special commission, private corporation, company, association or individual any power to make, control, appropriate, supervise or in any way interfere with any county, city, town or municipal improvement, money, property, or effects, whether held in trust or otherwise, or to levy taxes or assessments or perform any municipal function whatever." It is argued that: "If the legislature, because of § 13 of the Constitution, could not pass a law similar to the first paragraph of § 151.3, as a law of the State of California governing the city and county of San Francisco, the city and county would likewise have no right to pass such a charter provision unless it was specifically authorized by the Constitution. . . ." (App. Op. Brief, p. 9.) The obvious answer to this contention [***13] is that section 13, *supra*, is a restraint on the state Legislature's right to interfere with municipal affairs and in no way regulates what may be done by a municipal corporation by charter provision. (*Butterworth* v. *Boyd*, 12 Cal.2d 140 [82 P.2d 434, 126 A.L.R. 838]; *American Co.* v. *City of Lakeport*, 220 Cal. 548 [32 P.2d 622]; *Esberg* v. *Badaracco*, 202 Cal. 110 [259 P. 730]; *City of Oakland* v. *Garrison*, 194 Cal. 298 [228 P. 433]; *Mesmer* v. *Board of Pub. Serv. Com'rs*., 23 Cal.App. 578 [138 P. 935]; see, also, *In re Pfahler*, 150 Cal. 71 [88 P. 270, 11 Ann.Cas. 911, 11 L.R.A. N.S. 1092].)

CA(9)**(9)** It is also pointed out that section 8 1/2 of article XI of the state Constitution enumerates some seven matters that may be covered by charters adopted pursuant to section 8. The subject matter of section 151.3 is not expressly covered by any of the classes set forth in section 8 1/2. Apparently it is the thought of defendants that because the subject matter contained in section 151.3 is not expressly authorized in section 8 1/2 of article XI, it is unconstitutional. To state the contention is to refute it. The seven matters expressly [***14] authorized by section 8 1/2 cover only a very small part of the powers [*443] that may be set forth in a city charter. If section 8 1/2 by enumerating seven powers impliedly excluded any other, then 95 per cent or more of every city charter adopted under article XI would be unconstitutional. As already pointed out, a charter is a limitation on power not a grant of power.

CA(10)**(10)** Another tenuous argument is made to the effect that section 151.3 covers matters of general state concern, and it is argued that the state has already occupied the field so that a charter provision cannot be passed relating to the same subject matter at variance with the state statute. This "occupation of the field" by the state is conceived by defendants to have been effected by section 923 of the Labor Code. That [**671] section, in effect, provides that state policy encourages collective

bargaining between employers and employees. In *Nutter* v. *City of Santa Monica*, 74 Cal.App.2d 292 [168 P.2d 741], it was held that municipalities were not bound by nor subject to the collective bargaining provisions of the Labor Code. On the basis of this argument and the above cited case, defendants argue [***15] that the public policy of this state is "that collective bargaining should exist generally *but not with respect to public corporations*." (App. Op. Brief, p. 14.) They then rely on the familiar rule that with respect to matters of "general concern" local law is subordinate to the state law. The complete fallacy of this argument is that it assumes, contrary to the fact, that section 151.3 is a charter section providing for collective bargaining by public employees. It is not. The city employees do not bargain with the city to fix wages or other conditions of employment. Section 151.3 does not purport to give the public employees the right to bargain collectively, or otherwise. By that section the people have set up a standard for determining rates of pay that will insure these public employees a wage scale commensurate with wages received by workers in the same field in private industry. It is quite apparent that the "collective bargaining" aspect of section 151.3 is subordinate and incidental to the "rate of wage" aspect, and that the "collective bargaining" aspect does not apply to the public employees. It is clear that the fixing of salaries of municipal employees is a [***16] matter of municipal and not general concern. (*Popper* v. *Broderick*, 123 Cal. 456 [56 P. 53]; *City of Pasadena* v. *Charleville*, 215 Cal. 384 [10 P.2d 745]; *Butterworth* v. *Boyd*, 12 Cal.2d 140 [82 P.2d 434, 126 A.L.R. 838]; *Dept. of Water & Power* v. *Inyo Chem. Co.*, 16 Cal.2d 744 [108 P.2d 410]; *Trefts* v. *McDougald*, 15 Cal.App. 584 [*444] [115 P. 655]; *Storke* v. *City of Santa Barbara*, 76 Cal.App. 40 [244 P. 158].)

CA(11) **(11)** Defendants vigorously assert that section 151.3 contains a "viciousness" that may have "tremendous repercussions" upon city government generally (App. Op. Brief, p. 21), but they fail to disclose with any clarity what these dire consequences may be. The same argument was advanced in the trial court and the trial judge in his memorandum opinion disposed of the argument by the statement: "The dire effects which respondent contends will follow this holding are more or less imaginary." It must be remembered that it is not for the courts to pass upon the wisdom or policy of a charter provision. It is our function simply to interpret it and to determine whether such provision violates a constitutional provision. As [***17] was said in *Watson* v. *Division of Motor Vehicles*, 212 Cal. 279, 285 [298 P. 481]: "The courts have nothing to do with the wisdom, policy, or expediency of the law, for the power to make the law carries with it the power to judge of its necessity, expediency and justice." This fundamental doctrine has frequently been stated by the courts. (See *Lelande* v. *Lowery*, 26 Cal.2d 224 [157 P.2d 639]; *Bodinson Mfg. Co.* v. *California E. Com.*, 17 Cal.2d 321 [109 P.2d 935]; *Wholesale T. Dealers* v. *National etc. Co.*, 11 Cal.2d 634 [82 P.2d 3, 118 A.L.R. 486]; *Max Factor & Co.* v. *Kunsman*, 5 Cal.2d 446 [55 P.2d 177]; *Goodman* v. *Board of Education*, 48 Cal.App.2d 731 [120 P.2d 665].) Most of the arguments now being advanced by defendants are proper arguments to have advanced to the electors in 1945 and 1946 when this charter provision was before the people, but they are not proper arguments to advance to a court.

CA(12) **(12)** The last main contention of defendants is a matter of interpretation. It will be remembered that the matters in dispute relate to holiday pay and premium pay on the night shifts. Section 151.3 requires the "rate of pay" to be fixed [***18] in the manner there set forth. It is contended that this relates only to the "basic" rate of pay, and that holiday and premium pay on night shifts does not relate to the "basic" rate of pay but relates to "working conditions," and it is urged that the fixing of working conditions is beyond the scope of section 151.3. It is probably true that

section 151.3 relates only to the "basic" rate of pay and does not relate to "working conditions." But that in no way assists defendants. It is quite apparent that it was the intent of section 151.3 to give to the public employees of the type here involved the same take [*445] home [**672] pay received by private employees in the same industry. That means that when the public employees work on a night shift, or where a work week is interrupted by a holiday they are to receive the same pay that private employees would receive for work similarly performed. It is quite obvious that night shift pay and pay for holidays is a part of the "basic" rate of pay, and is as much a part of the wage structure as the hourly wage itself. If evidence were necessary on such an obvious matter it was supplied by Norman Beals, San Francisco representative [***19] for the State Personnel Board, who so testified. The "basic" "rate of pay" is the take home pay of the employee. The charter provision guarantees that the take home pay of public employees shall be the same as private employees. That obviously includes holiday and premium pay for night work.

The judgment appealed from is affirmed.

ATTACHMENT M
MEMORANDUM ON LEGISLATIVE DELEGATION TO AUDIT COMMITTEE

Memorandum

To: Lisa Briggs
From: James Ingram
Re: Charters Are the Law of the State
Date: August 31, 2007

Note also that this language addresses the issue of whether the creation of an Audit
Committee would constitute a legislative delegation and be prohibited by state law:

"The provisions of a charter are the law of the State and have the force and effect of legislative enactments."

Article 11, Section 3 of the California Constitution also provides the charter change process:

The Governing Body may:	->Propose new charter. ->Propose charter revision. ->Call election of Charter commission.
An initiative may:	->Propose charter revision. ->Require election of Charter commission.
Elected Charter Comm. may:	->Propose new charter. ->Propose charter revision.

CALIFORNIA CONSTITUTION, ARTICLE 11 LOCAL GOVERNMENT
"SEC. 3. (a) For its own government, a county or city may adopt a charter by majority vote of its electors voting on the question. The charter is effective when filed with the Secretary of State. A charter may be amended, revised, or repealed in the same manner. A charter, amendment, revision, or repeal thereof shall be published in the official state statutes. County charters adopted pursuant to this section shall supersede any existing charter and all laws inconsistent therewith. The provisions of a charter are the law of the State and have the force and effect of legislative enactments.

(b) The governing body or charter commission of a county or city may propose a charter or revision. Amendment or repeal may be proposed by initiative or by the governing body.

(c) An election to determine whether to draft or revise a charter and elect a charter commission may be required by initiative or by the governing body.

(d) If provisions of 2 or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail."

ATTACHMENT N
REPORT ON INTERNAL AUDITING FUNCTIONS

Subcommittee on Financial Reform

Staff Report on Internal Auditor by James Ingram--**REVISED**

Table 1: Comparative Analysis of the Auditing Function in Large California Cities

City	Pop'n, 2005	Form of Government	Auditing Officer	Elected or Appointed	Removal Process/Term	Officer Reports to:	Specific Powers
Los Angeles	3,844,829	Strong Mayor-Council	Controller	Elected	4-year term; public may recall officer.	Public	Extensive; Performance, management audits, industrial surveys, etc.
San Diego[20]	1,266,753	Strong Mayor-Council	Auditor and Comptroller	Mayoral appointee confirmed by Council.	Mayor may dismiss, subject to Council's right to overturn dismissal upon officer's appeal within 10 calendar days of notification.	Mayor, due to Mayor's supervision of Manager.	Supervises accounts. Council must provide for annual audit by individuals independent of any connection with city.
San Jose	912,332	Council-Manager (weak mayor)	Auditor	Mayor and Council appoint to 4-year term.	Early termination only for cause upon vote by 10 of the 11 Council members.[21]	Council	Extensive performance audits.

[20] The 2003 U.S. Census projection was used for San Diego's population; an accurate figure for 2005 was unavailable.

[21] The Mayor is a member of the San Jose City Council, and as such participates in appointing, removing and directing that officer.

San Francisco	739,426	Strong Mayor-County Board of Supervisors [22]	Controller	Mayor appoints to 10-year term with confirmation by Supervisors.	Mayor may remove officer for cause with approval of 2/3 of Supervisors.	Mayor	Extensive authority: performance and service audits.
Long Beach	474,014	Council-Manager (weak mayor)	Auditor	Elected	4-year term; may be recalled by voters.	Public	Auditor claims authority to do performance audits; charter actually grants officer limited authority.
Fresno	461,116	Strong Mayor-Council	Controller	Appointed by CAO with Council approval (CAO is appointed and removed by Mayor without Council role.)	Removal process unspecified.	CAO, and thus Mayor.	Manages Finance Dept., reporting annually. Council annually employs CPA to audit city.
Sacramento	456,441	Council-Manager (weak mayor)	Charter-provided Treasurer; Manager created an Auditor.	Council appoints Treasurer; Manager appoints Auditor.	Manager and Treasurer serve at Council's pleasure; Auditor serves at pleasure of Manager.	Council, ultimately.	Manager appoints independent CPA annually, with Council approval, to audit city.
Oakland	395,274	Strong Mayor-Council	Auditor	Elected	4-year term; may be recalled by voters.[23]	Public	Extensive including performance

[22] San Francisco is a consolidated city-county, and thus the County Board of Supervisors is the legislative body.

[23] There is ambiguity in Oakland's Charter regarding the Auditor. The Auditor is supposed to be elected by exactly the same process as the Mayor; does this include the two-term limit placed on the Mayor? Compare Sections 302 and 403.

							audits. Council must employ CPA annually for independent audit.
Santa Ana	340,368	Council-Manager (weak mayor)	Director of Finance	City Manager appoints officer with Council confirmation.	City Manager may remove.[24]	City Manager; reports go to Council via Manager.	DOF pre-audits; Council appoints independent CPA annually to audit city finances.
Anaheim	331,804	Council-Manager (weak mayor)	Director of Finance	City Manager appoints officer after Council reviews and approves appointment.	City Manager may remove officer after Council review and approves removal.	City Manager	DOF pre-audits; Council appoints independent CPA annually to audit city finances.
Bakersfield	295,536	Council-Manager (weak mayor)	Finance Director serves as Auditor-Controller.	City Manager appoints.	City Manager may remove.	City Manager	Handles accounting system; reports annually on finance to Manager.
Riverside	290,086	Council-Manager (weak mayor)	Controller	City Manager appoints with Council approval.	Manager may remove or suspend without Council approval.	City Manager	Audits demands, annually reports on finance; CPA annually employed by Council to audit city.

[24] See Section 408 of the Santa Ana City Charter, as well as Section 501, which render this issue ambiguous.

Stockton	286,926	Council-manager (weak mayor)	Auditor	Council appoints.	Auditor serves at Council's pleasure.	Council	Responsible for performance audits and special audits.

Source: The city charters, administrative & municipal codes, and official city websites for all cities included.

Table 2: Comparative Analysis of the Auditing Function in Large United States Cities

City	Pop'n, 2005	Form of Government	Auditing Officer	Elected or Appointed	Removal Process/Term	Officer Reports to:	Specific Powers
New York City, NY	8,213,839	Strong Mayor-Council	Controller	Elected	4-year term	Public	Extensive audit authority.
Los Angeles	3,844,829	Strong Mayor-Council	Controller	Elected	4-year term; public may recall officer.	Public	Extensive; Performance, management audits, industrial surveys, etc.
Chicago, IL	2,842,518	Strong Mayor-Council	Treasurer	Elected	4-year term	Public	Establishes independent audit.[25]
Houston, TX	2,076,189	Mayor-Council (no mayoral veto)	Auditor	Elected	2-year term; two-term limit; public may recall the officer.	Public	Extensive; performance reviews authorized.
Philadelphia, PA	1,463,281	Strong Mayor-Council	Controller	Elected	4-year term; no term limit (Mayor is limited to 2 terms).	Public	Extensive, through management of Audit Dept; Council may employ CPAs for outside audit.

[25] Chicago does not operate under a home rule charter, but rather takes its governmental system from Illinois state codes. Ester R. Fuchs' award-winning book, *Mayors and Money: Fiscal Policy in New York and Chicago* credits Chicago's mayor-centered financial system with that city's avoidance of the fiscal crisis seen in NYC. Ester Fuchs was a leader in NYC Mayor Bloomberg's 2004 charter review committee that recommended changes to prevent the Big Apple from experiencing the woes that led to the city's period under control of the Municipal Assistance Commission, which recently ended.

Phoenix, AZ	1,461,575	Council-Manager (weak mayor)	Auditor	City Manager appoints	Auditor serves at pleasure of the Manager.	Manager	Auditor may verify warrants against city; Annual independent audit by CPAs required.
San Diego	1,266,753[26]	Strong Mayor-Council	Auditor and Comptroller	Mayoral appointee confirmed by Council.	Mayor may dismiss, subject to Council's right to overturn dismissal upon officer's appeal within 10 calendar days of notification.	Mayor, due to Mayor's supervision of Manager.	Supervises accounts. Council must provide for annual audit by individuals independent of any connection with city.
San Antonio, TX	1,256,509	Council-manager (At-large council-member is the mayor)	City Internal Auditor	Council appoints.	No specified term; Council majority may dismiss at will.	Council	Financial, compliance & procedural audits-all city agencies and programs.
Dallas, TX	1,213,825	Council-Manager (At-large council-member is the mayor)	Auditor	Mayor and City Council appoint, after consulting with a special auditor nominating commission.	2-year term.	Council[27]	Same as San Antonio, but may audit for "economy and efficiency". Outside audit by Council-appointed CPA, annually.

[26] The 2003 U.S. Census projection was used for this figure; an accurate figure for 2005 was unavailable.
[27] Dallas's Mayor is a member of the City Council, and thus participates in appointing and directing that officer.

San Jose	912,332	Council-Manager (weak mayor)	Auditor	Mayor and City Council appoint to 4-year term.	Early termination only for cause upon vote by 10 of the 11 Council members.[28]	Council	Extensive performance audits.
Detroit, MI	886,671	Strong Mayor-Council	Auditor General	Council appoints; included in Legislative Branch.	10-year term; one term limit. Council may remove for cause by 2/3 majority.	Council	Financial audits only.
Indianapolis, IN	784,118	Strong Mayor-City-County Council[29]	City Controller; County Auditor; City-County Internal Audit Agency; Audit Committee	Mayor appoints City Controller without confirmation; County Auditor is elected. The City-County Internal Audit Agency is a department responsible to the Mayor. The Mayor appoints 4 of the 7 members of the Audit Committee (2 members from City-County Council).	City Controller serves at pleasure of the Mayor; County Auditor has 4-year term; the City-County Internal Audit Agency is overseen by the Audit Committee, but reports to Mayor; Audit Committee members serve for terms.	Mayor	The County Auditor appears only to be a budget officer. The auditing is handled by the Controller, City-County Internal Audit Agency and the Audit Committee. The Audit Committee meets with independent external auditors hired to audit city accounts.

[28] San Jose's Mayor is a member of the City Council, and as such participates in appointing, directing and removing that officer.
[29] Indianapolis consolidated with Marion County to form a city-county whose government is called Unigov. The legislative body is the City-County Council.

Jacksonville, FL[30]	782,623	Mayor-Council	Council Auditor	Council appoints.	Council may remove by majority.	Council	Conducts continuous audit; assists independent auditor appointed by Council.
San Francisco[31]	739,426	Strong Mayor-County Board of Supervisors	Controller	Mayor appoints to 10-year term with confirmation by Supervisors.	Mayor may remove officer for cause with approval of 2/3 of Supervisors.	Mayor	Extensive authority: performance and service audits.

Source: The city charters, administrative & municipal codes, and official city websites for all cities included.

[30] Jacksonville, Florida is the result of a merger of the city of Jacksonville with the rest of Duval County.
[31] San Francisco is a consolidated city-county, and thus the County Board of Supervisors is the legislative body.

ATTACHMENT O
REPORT ON BALANCED BUDGET

Subcommittee on Financial Reform
Revised Staff Report on Balanced Budget by James Ingram

The full Committee voted to amend the work-plan to include consideration of the issue of a balanced budget requirement. This report addresses the question of whether the City should include language requiring a balanced budget in the city charter.

Discussion of the Balanced Budget Concept

If the Committee decided to recommend inclusion of a balanced budget mandate among its reforms, then Section 68 would likely be the best place in the charter for a "balanced budget" requirement. The inclusion of "balanced budget" language could be a political benefit, and could be drafted so as not to interfere with the current charter requirements regarding bonded indebtedness. This might be another "selling point" for the charter amendments recommended by the Charter Review Committee.

FYI: At present, California cities are subject to the Prop 13, Prop 218 and Gann Limits provisions of the State Constitution (Articles XIIIA and XIIIB). As the Berkeley City Manager indicates in that city's "Glossary of Budget Terms," a California city's budget is limited in the following manner:

"Spending Limitation (Gann Limit) – Article XIII B of the California Constitution establishes a spending limitation on government agencies within California. The spending limit is a mandated calculation of how much the City is allowed to expend in one fiscal year. The amounts of appropriations subject to the limit are budgeted proceeds of taxes. The total of these budgeted revenues cannot exceed the total appropriations limit. Annually, local governments may increase the appropriate limit by a factor comprised of the change in population combined with the California inflation rate as determined by the State Finance Department."[32]

Present Charter Sections with Implicit or Express Balanced Budget Requirements

Section 39 of the present charter states that "No contract, agreement, or other obligation for the expenditure of public funds shall be entered into by any officer of the City and no such contract shall be valid unless the Auditor and Comptroller shall certify in writing that there has been made an appropriation to cover the expenditure and that there remains a sufficient balance to meet the demand thereof."

Section 69 of the present charter does require the Manager to submit "a general budget summary setting forth the aggregate figures of the budget in such manner as to show the balanced relations between the total proposed expenditures and the total anticipated income and other means of financing the budget for the ensuing year…"

Section 70 implies that there is to be a balanced budget because if there is a need to increase salaries in the best interest of the City, the action to address this problem is subject to the caveat that funds be available.

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[32] http://www.ci.berkeley.ca.us/budget/GlossaryofTerms.html accessed on June 7, 2007.

Section 74 requires the Manager to provide a sufficient appropriation for the City's debt, which is to be included in the Annual Appropriation Ordinance. If this is not done, the Auditor and Comptroller must set up an appropriation account to fund the debt, and implicitly do so before using City funds for other purposes.

Section 75 of the present charter does require the Council to set taxes at a level sufficient to meet budget requirements.

Section 80 requires the approval of the Auditor and Comptroller before the City enters into any contract, agreement or obligation requiring an appropriation. The Auditor and Comptroller must first certify to the Council that the money for the appropriation is in the treasury and otherwise unencumbered.

Section 92 does not permit the city to incur obligations in excess of its constitutional authority (Gann Limits).

Section 99 requires that all votes to create debt be either accompanied or preceded by establishment of a tax to pay off the principal and interest of such debts.

Section 290 (b)(2)(B) requires that the Mayor's and Council's actions in connection with the modification, veto and override process for the budget be "subject to the balanced budget requirements set forth in section 71." In actual fact, there is no actual requirement of a balanced budget under Charter Section 71.

Other Cities' Experiences with a Balanced Budget Requirement

The Subcommittee requested research regarding the actual workings of balanced budget requirements in some cities that include these in their charters. Therefore, SDCRC staff are presently conducting interviews of financial officers from a few of the cities covered in the earlier survey, in particular, New York City, Philadelphia, Chicago and Los Angeles. There are many varying perspectives on the balanced budget issue, depending on whether one communicates with controllers, chief financial officers, chief legislative analysts, council budget committees, or other budgetary players. Consequently, we wanted to be a little more scientific in our research. We have reviewed the public administration literature on the municipal balanced budget, which includes surveys of both states and cities, and their financial experiences with operating under a balanced budget requirement.

The best article in the literature is Carol W. Lewis's 1994 *Public Administration Review* article, "Budgetary Balance: The Norm, Concept, and Practice in Large U.S. Cities" (Volume 54, Number 6, pp. 515-524). Lewis found that 20 of the nation's 50 states require that their municipalities balance their budgets. 17 states require them through statute, while 3 mandate them in the state constitution. Texas requires balanced budgets of some, though not all of its cities (apparently by statute). California is not one of the states that constitutionally or statutorily require their cities to balance their budgets, although the Gann Appropriation Limits (Prop 4, 1979, Article XIIIB of California's Constitution) do act to some degree to counteract the indirect deficit-producing consequences of property tax constrictions (Prop 13, 1978, Article XIIIA of California's Constitution). California's city charters are the vehicle through which most of the state's major cities are required to maintain a balanced budget.

Despite the fact that 29 states impose no statutory or constitutional requirements for

balanced budgets on their municipalities, many cities do face such mandates through their city charters. Irene Rubin, one of the leading experts in the country on public budgeting, stated in 1993 that "Cities, like states, are required to balance their budgets" (Rubin, *The Politics of Public Budgeting*, p. 198). Likewise, Glenn Cope wrote in 1992 that "Most local governments are required by their charters, state laws, or both, to balance their operating budgets" (Cope, "Walking the Fiscal Tightrope: Local Budgeting and Fiscal Stress," *International Journal of Public Administration*, Volume 5, p. 1099). In Carol Lewis's survey of the United States' 100 most populous cities, she found near unanimity in the requirement for balanced budgets. Only Wichita, Kansas was not required to balance its local budget.

The stage at which a budget is required to be in balance is also an important issue. A city could be required only to submit a balanced budget, rather than being required to show no deficit at the end of the year. 84 of the country's 100 largest cities require the executive to submit a balanced budget, and 86 of them require the legislature to adopt a balanced budget. Only 35 formally prohibit a year-end deficit; operating results must balance in these cities, although reserves and other tactics can be used to achieve this outcome.

34 of the largest 100 cities must balance operating results over the course of budget implementation, while 24 require to budget to be balanced at submission, adoption and year end. These cities must, in effect, rebudget through the course of the year to ensure that operations match fiscal expectations. New York City was required to rebudget quarterly after the 1975 fiscal crisis impelled the state to act. In 2004, New York City ensconced this state mandate within its city charter.

Carol Lewis examined the workings of the balanced budget requirement on the very eve of the Orange County bankruptcy. In fact, her article was published in the November 1994, the month before that fiscal crisis occurred. Consequently, she wrote of Bridgeport, Connecticut as the "largest general purpose unit of government ever to petition under the federal Bankruptcy Code" (Lewis, 519). Since the city was not insolvent, the federal judge did not permit the bankruptcy filing to proceed. Lewis indicates that Bridgeport had very stringent charter requirements to balance its budget, and tried to use bankruptcy court as a way to avoid fiscal discipline.

Lewis goes on to point out that the balanced budget requirement is no magic bullet. Cities find ways to technically comply with balanced budget requirements while resisting authentic compliance with the spirit of the mandate. Such tactics to achieve formal compliance may include: "use of reserves; one-shot revenues such as asset sales; shifting costs off the general fund, interfund transfers, and shifting costs to the capital budget; underfunding accrued liabilities such as pensions; delaying deliveries, payrolls, and payments to the next fiscal year; estimation manipulation or distortion; using plugs such as anticipated and even unidentified (and perhaps illusory) savings or revenues; and turning to off-budget entities, indiscernible credit arrangements, loan guarantees, and tax expenditures. Not surprisingly, some entrenched techniques sacrifice economy for efficiency; for example, manipulation of employee benefits may translate into future cost escalations. A testament to ingenuity, this litany accommodates tactics designed for both short-term flexibility and formalistic compliance" (p. 522). Lewis reminds readers of the "magic asterisk" that Reagan Era OMB Director employed as an example of the "stamped gimmicks—the stuff of smoke and mirrors" (p. 521).

Lewis gives evidence that the cities with requirements for adopting a balanced

budget have produced mixed results in terms of bond ratings. Buffalo, Cleveland, New Orleans, Philadelphia, Pittsburgh and St. Louis are required to adopt balanced budgets, yet have credit ratings in the B's and below. She concludes that "Municipal budgeting cannot be fruitfully reduced to a single criterion, even one as widely accepted as budgetary balance" (p. 523). She recalls H. L. Mencken's observation that "For every human problem, there is a solution that is simple, neat, and wrong" (p. 523).

Ultimately, Lewis's study confirms "the pivotal role of balance in municipal budgeting" but "cautions against overrating the power of balance as budgetary disciplinarian" (p. 523). In Aristotelian terms, the balanced budget may be a necessary but not a sufficient condition to ensure municipal fiscal responsibility. Authentic compliance with the mandate would require commitment to more than mere formalism, which means that a city has made the tough choices necessary to confront realities rather than sweeping them under the rug.

Jonathan Kahn points out in his remarkable book on *Budgeting Democracy* that the invention of the budget was critical to remaking the connection between citizens and their government. When the experts of New York City's Bureau of Municipal Research brought the concept to local government in the early 1900s, they allowed the citizen-state relationship to be recast. The United States' 1921 adoption of the Budget Act brought this innovation to the national level. More recently, public faith in government has been compromised by the red ink due of deficit spending and the use of indebtedness to balance the federal budget. In this new era, the concept of a "balanced budget" has become as important as the budget concept itself was to the Progressive Era's transformation of the connection between the public and the government.

Comparative Analysis of Specific Cities on the Balanced Budget Requirement

Based on the request of the Subcommittee on Financial Reform, the staff has assembled comparative information regarding which cities have balanced budget requirements in their charters. For the purposes of this report, we examined strong mayor cities in the United States and California. The sample includes all strong mayor cities among the largest 40 U.S. cities, and all strong mayor cities among California's 13 largest cities by population.

Cities with Charters That Require Balanced Budgets

New York City
Philadelphia
Nashville-Davidson
Denver
New Orleans
Los Angeles
San Diego
San Francisco
Oakland
Fresno

Cities with Charters Not Expressly Requiring Balanced Budgets

Detroit
Columbus
Boston

Cleveland

Details on the Cities Surveyed

1. New York City Charter Section 258 provides:

Standards for budget and financial plan. a. The operations of the city shall be such that, at the end of the fiscal year, the results thereof shall not show a deficit when reported in accordance with generally accepted accounting principles. The mayor shall take all actions necessary in accordance with the provisions of the charter, including but not limited to section one hundred six, or other applicable law to ensure that the city is in compliance with this subdivision.

b. Pursuant to the procedures contained in subdivision c of this section, each year the mayor shall develop, and from time to time modify, a four year financial plan. Each such financial plan and financial plan modification shall comply with the requirements of subdivision d of this section and shall conform to the following standards: (1) For each fiscal year, the city's budget covering all expenditures other than capital items shall be prepared and balanced so that the results thereof would not show a deficit when reported in accordance with generally accepted accounting principles and would permit comparison of the budget with the report of actual financial results prepared in accordance with generally accepted accounting principles.

(2) The city shall issue no obligations which shall be inconsistent with the financial plan prepared in accordance with this section.

(3) Provision shall be made for the payment in full of the debt service on all bonds and notes of the city and for the adequate funding of programs of the city which are mandated by state or federal law and for which obligations are going to be incurred during the fiscal year.

(4) All projections of revenues and expenditures contained in the financial plan shall be based on reasonable and appropriate assumptions and methods of estimation. All cash flow projections shall be based upon reasonable and appropriate assumptions as to sources and uses of cash (including but not limited to the timing thereof), and shall provide for operations of the city to be conducted within the cash resources so projected.

(5) A general reserve shall be provided for each fiscal year to cover potential reductions in projected revenues or increases in projected expenditures during each such fiscal year. The amount provided for such general reserve shall be estimated in accordance with paragraph four of this subdivision, but in no event shall it be less than one hundred million dollars at the beginning of any fiscal year.

(6) In the event that the results of the city's operations during the preceding fiscal year have not comported with subdivision a of this section, the first fiscal year included in any financial plan shall make provision for the repayment of any deficit incurred by the city during the preceding fiscal year.

c. The financial plan shall be developed and may from time to time be modified, in accordance with the following procedures:

(1) The mayor shall, in conjunction with the preliminary budget prepared pursuant to section one hundred one, prepare a financial plan covering the four ensuing fiscal years (the first year of which is the year for which such preliminary budget is being prepared) as well as updating the current fiscal year.

(2) After the preparation by the mayor of a financial plan in accordance with the preceding paragraph, the mayor shall reexamine, at least on a quarterly basis, the projections of revenues and expenditures and other estimates contained in the

financial plan, and shall prepare modifications in accordance with the following procedures:

(a) The budget message, issued pursuant to section two hundred fifty of this chapter, shall include an update of the financial plan covering the four ensuing fiscal years (the first year of which is the year for which such budget message is being prepared) as well as an update for the current fiscal year.

(b) Not later than thirty days after the budget is finally adopted, the mayor shall issue an update of the financial plan covering the four ensuing fiscal years (the first year of which shall be the year for which such budget has been adopted) as well as an update for the fiscal year that is ending or has just ended. Such update shall reflect changes which were made in the budget in accordance with sections two hundred fifty-four and two hundred fifty-five; provided, however, that the budget adopted in accordance with such sections shall be consistent with the standards applicable to the financial plan set forth in this section.

(c) During the second quarter of the fiscal year, the mayor shall issue an update of the financial plan covering the fiscal year in which such quarter occurs and the three ensuing fiscal years.

(d) In addition, on such schedule as the mayor deems appropriate, the mayor may issue further updates of the financial plan during the fiscal year.

d. The financial plan shall include projections of all revenues, expenditures and cash flows (including but not limited to projected capital expenditures and debt issuances) and a schedule of projected capital commitments of the city. In addition, each financial plan and financial plan modification shall include a statement of the significant assumptions and methods of estimation used in arriving at the projections contained therein.

e. Notwithstanding any inconsistent provision of this charter, in the event of any change in generally accepted accounting principles, or change in the application of generally accepted accounting principles to the city, if the mayor determines that immediate compliance with such change will have a material effect on the city's budget over a time period insufficient to accommodate the effect without a substantial adverse impact on the delivery of essential services, the mayor may authorize and approve a method of phasing the requirements of such change into the budget over such reasonably expeditious time period as the mayor deems appropriate.

f. The powers, duties, and obligations set forth in this section shall be subject to the powers, duties, and obligations placed upon any state or local officer or agency, including but not limited to the New York state financial control board, by or pursuant to the New York State Financial Emergency Act for the City of New York, while such act remains in effect."

2. Philadelphia Charter Section 2-302 provides:

"2-302. Balancing the Budget.
Not later than the passage of the annual operating budget ordinance, the Council shall ordain such revenue measures as will, in the opinion of the Mayor, yield sufficient revenue to balance the budget. For this purpose new sources of revenue or increased rates from existing sources of revenue not proposed by the Mayor shall be deemed to yield in the ensuing fiscal year such amounts as the Mayor shall determine. The annual operating budget ordinance shall not become effective and the City Controller shall not approve any order for any expenditure thereunder until the Council has balanced the budget."

3. Detroit's Charter does not appear to require a balanced budget.

4. Columbus's Charter does not appear to require a balanced budget.

5. Nashville-Davidson's Charter Article 6 provides for balancing the city-county's budget in four separate sections:

"Sec. 6.03. Scope of the annual operating budget.
Section I of the annual operating budget shall apply only to the general services district and shall deal with those services and functions appertaining to the general services district, as set out by this Charter, or by ordinance of the council.
Section II of the annual operating budget shall apply only to the urban services district and shall deal with those services and functions appertaining to such urban services district, as set out in this Charter, or by ordinance of the council.
Each of the above described sections of the annual operating budget shall contain with respect to each of the operating funds of the metropolitan government to which they are applicable:
(a) An estimate of the unencumbered fund balance or deficit at the beginning of the ensuing fiscal year, and the amount of any reserves for designated purposes or activities includable in the operating budget.
(b) A reasonable estimate of revenues to be received during the ensuing year, classified according to source; but the estimated revenues from current and from delinquent property taxes shall not exceed the percentage of the total receivable from each such source collected during the last completed fiscal year; or the current fiscal year.
(c) Proposed expenditures for each organizational unit and activity in accordance with the established classification of accounts, including those capital outlays which are to be financed from the revenues of the ensuing year, and including all debt service requirements in full for such fiscal year payable from such fund.
In no event shall the total proposed expenditures from any fund exceed the total anticipated revenues plus the estimated unappropriated surplus, or fund balance, and applicable reserves and less any estimated deficit at the end of the current fiscal year.

Sec. 6.06. Action by council on operating budget.
After the conclusion of the public hearings, the council may amend the operating budget proposed by the mayor; except, that the budget as finally amended and adopted must provide for all expenditures required by law or by other provisions of this Charter and for all debt service requirements for the ensuing fiscal year as certified by the director of finance. Neither shall the council alter the estimates of receipts or other fund availability included in the budget document except to correct errors and omissions, in which event a full explanation shall be spread on the minutes of the council. In no event shall the total appropriations from any fund exceed the estimated fund balance, reserves and revenues, constituting the fund availability of such fund.
The council shall finally adopt an operating budget for the ensuing fiscal year not later than the thirtieth day of June, and it shall be effective for the fiscal year beginning on the following July 1st. Such adoption shall take the form of an ordinance setting out the estimated revenues in detail by source and making appropriations according to fund and by organizational unit, purpose or activity as set out in the budget document. If the council shall fail to adopt a budget prior to the beginning of any fiscal year, it shall be conclusively presumed to have adopted the budget as submitted by the mayor.

A copy of the adopted budget, certified by the metropolitan clerk, shall be filed in the office of the director of finance.
The amount set out in the adopted operating budget for each organizational unit, purpose or activity shall constitute the annual appropriation for such item, and no expenditure shall be made or encumbrance created in excess of the otherwise unencumbered balance of the appropriation, or allotment thereof, to which it is chargeable. This shall not preclude the impoundment of funds or additional appropriations as provided herein.

Sec. 6.07. Property tax levies.
The council shall levy an annual tax on real and personal property and merchants' ad valorem in the general services district, and the tax levy ordinance shall be the next order of business of the council after the adoption of the operating budget. The tax rate set by such ordinance shall be in two (2) parts; the general tax rate and the school tax rate.
The general tax rate set by such ordinance shall be such that a reasonable estimate of revenue from the levy shall at least be sufficient, together with other anticipated revenues, fund balances, and applicable reserves, to equal the total amount appropriated with the exception of the amount appropriated for schools and to provide in addition, a reasonable amount of working capital for each of the several funds.
The school tax rate set by the ordinance shall be such that a reasonable estimate of revenue from the levy shall at least be sufficient, together with other anticipated revenues, fund balances, and applicable reserves, to equal the total amount appropriated for schools and to provide in addition, a reasonable amount of working capital.
After the council has approved the annual operating budget of the urban services district, said council shall determine and declare the amount of revenue which must be produced from a tax levy upon the real and personal property and merchants' ad valorem within the urban services district. The urban council shall thereupon convene and it shall have a mandatory obligation by resolution to levy a property tax adequate with other available funds to finance the budget for urban services, as determined by the council; subject, however, to the requirements of section 1.04 of this Charter with respect to the tax on property in the newly annexed areas.
The willingness and ability of citizens to bear the burden of tax increases should always be considered. Therefore, notwithstanding any provisions above, real property tax rates shall not exceed the maximum rates approved by the voters of the county in a referendum. Such referendum may be authorized either by the mayor or by a majority vote of the council no more than once each calendar year pursuant to Tennessee Code Annotated section 2-3-204. The referendum shall read "The maximum real property tax rates for Davidson County shall be increased to:" followed by a list of rates. Voters shall be provided the two choices of FOR and AGAINST. The real property tax rates in effect as of November 7, 2006, shall be the maximum rates allowed until the first referendum occurs.

Sec. 6.09. Impoundment of funds.
Upon certification of the director of finance that the revenues or other resources actually realized with respect to any fund are less than was anticipated and are insufficient to meet the amounts appropriated from such fund, it shall be the duty of the mayor to impound such appropriations as may be necessary to prevent deficit operation."

6. Boston's Charter does not appear to require a balanced budget.

7. Denver's city-county Charter Sections 7.1.4 and 7.4.1 provide, respectively:

"Balanced budget; emergencies; contingency reserve.
The budget proposed by the Mayor shall not propose expenditures in excess of estimated opening balances and anticipated income; however, in estimating, the Mayor may reduce the anticipated income from property taxes by an amount for uncollectible taxes. In the general fund the budget estimates for the ensuing year shall include an amount as a year-end closing balance which amount shall not be expended except for emergencies approved by a two-thirds vote of Council, within the fiscal year to which the proposed budget applies but may be considered as income available for expenditures in preparation of the proposed budget for the following year. The proposed budget for the general fund shall also include an amount, not less than two (2) per cent of the total estimated expenditures set forth in the general fund for the ensuing year, for the payment of any expense, the necessity of which is caused by any casualty, accident or unforeseen contingency, after the passage of the annual appropriation ordinance. Revenues received during the year in excess of those projected, or an opening balance larger than projected, will automatically be added to the contingency reserve."

"Property tax levy; mill levy limitation.
The Council, after deducting the amount collectible from other sources, shall levy upon all taxable property, real and personal, within the limits of the City and County, the amount of taxes for City and County purposes necessary to provide for the payment during the ensuing fiscal year, of all properly authorized demands upon the treasury, not exceeding fifteen (15) mills on the dollar for all general City and County purposes upon the total assessed valuation of said property, and shall also, in addition thereto, levy the State and school district taxes. The foregoing limitation of fifteen (15) mills shall not apply to taxes which shall annually be levied by the Council for the payment of any general obligation bonded indebtedness of the City and County, now existing or hereafter created, or interest thereon, nor for sinking fund, nor for the indebtedness of any municipal corporation or quasi municipal corporation heretofore consolidated with or hereafter incorporated with, or annexed to, the City and County, or of the interest thereon; nor to special assessments for local improvements."

8. Cleveland's Charter does not appear to require a balanced budget.

9. New Orleans Charter, Section 6-102(4) provides:

"Where the estimated revenues from existing sources are insufficient to meet the recommended expenditures, the Mayor shall provide recommendations of new sources of revenues to balance the budget."

10. Los Angeles Charter Sections 331 and 332 require a balanced budget in the same way as San Diego—by requiring that taxation provide sufficient revenue to cover appropriations:

"Tax Levy.
Not earlier than the month of June but not later than the last day of the month in which the statement of property valuations within the City as required by law is received, the Council shall adopt an ordinance levying upon the assessed valuation of the property in the City, in accordance with the provisions of law, a rate of taxation

upon each one hundred dollars ($100) of valuation, which, with the amounts, if any, transferred from the Reserve Fund in or for the current fiscal year subsequent to the adoption of the annual budget and the amount estimated to be received from fines, licenses and other sources of revenue, will be sufficient to raise the amount appropriated in the annual budget."

"Tax Levy - Alternate Method.
If the Council fails to levy a rate of taxation at the time and in the manner provided by the Charter, the Controller shall add to the budget the amount required to meet maturing portions of principal and interest on the bonded indebtedness of the City and of special districts in the City, and any special taxes lawfully imposed, and shall calculate a rate of taxation as provided in Section 331, not exceeding the limit provided by law. The Controller shall give public notice of the rate of taxation by publication in a newspaper of general circulation in the City or by other means provided by ordinance, and the tax rate calculated by the Controller shall be the rate of taxation of the City. The Controller is hereby vested with all necessary legislative power to carry out the provisions of this section."

11. San Diego does provide for a balanced budget at present, based upon several sections of the City's Charter (See the full report for details).

12. San Francisco's city-county Charter Sections 9.101(2) and 9.105 and 9.113(d) provide, respectively:

"The annual proposed budget and appropriation ordinances shall be balanced so that the proposed expenditures of each fund do not exceed the estimated revenues and surpluses of that fund. If the proposed budget contains new revenue or fees, the Mayor shall submit to the Board of Supervisors the relevant implementing ordinances at the same time the annual budget is submitted."

"No amendment to the appropriations ordinance may be adopted unless the Controller certifies availability of funds."

"No ordinance or resolution for the expenditure of money, except the annual appropriation ordinance, shall be passed by the Board of Supervisors unless the Controller first certifies to the Board that there is a sufficient unencumbered balance in a fund that may legally be used for such proposed expenditure, and that, in the judgment of the Controller, revenues as anticipated in the appropriation ordinance for such fiscal year and properly applicable to meet such proposed expenditures will be available in the treasury in sufficient amount to meet the same as it becomes due."

[Note well that San Francisco also requires a Rainy Day Reserve Fund in Section 9.113.5, as does NYC in the sections of its Charter above.]

13. Oakland's Charter Section 802 provides:

"Levy of Property Tax. Not later than the date set by state law for this purpose, the Council shall by resolution fix the rate of property tax to be levied and levy the tax upon all taxable property in the City. Such rate shall be adequate to meet all obligations of the City for the fiscal year, taking into account estimated revenue from all other sources. Should the Council fail to fix the rate and levy taxes within the time prescribed, the rate for the next preceding fiscal year shall thereupon be

automatically effective, and a tax at such rate shall be levied upon all taxable property in the City for the current fiscal year."

14. Fresno's Charter Section 1207 provides:

"TAX LEVY. On or before the last Tuesday in August in each year, the Council shall, by ordinance, levy such tax as may be necessary to meet the appropriations made (less the estimated amount of revenue from other sources), and all sums required by law to be raised on account of the City debt and interest thereon, together with such addition, not exceeding five per cent, as may be deemed necessary to meet commissions, fees and deficiencies from the estimates in the amount of taxes collected."

Appendix One: Current Charter Sections Related to the Balanced Budget

"SECTION 39. CITY AUDITOR AND COMPTROLLER.
The City Auditor and Comptroller shall be elected by the Council for an indefinite term and shall serve until his successor is elected and qualified. The City Auditor and Comptroller shall be the chief fiscal officer of the City. He shall exercise supervision over all accounts, and accounts shall be kept showing the financial transactions of all Departments of the City upon forms prescribed by him and approved by the City Manager and the Council. He shall submit to the City Manager and to the Council at least monthly a summary statement of revenues and expenses for the preceding accounting period, detailed as to appropriations and funds in such manner as to show the exact financial condition of the City and of each Department, Division and office thereof. No contract, agreement, or other obligation for the expenditure of public funds shall be entered into by any officer of the City and no such contract shall be valid unless the Auditor and Comptroller shall certify in writing that there has been made an appropriation to cover the expenditure and that there remains a sufficient balance to meet the demand thereof. He shall perform the duties imposed upon City Auditors and Comptrollers by the laws of the State of California, and such other duties as may be imposed upon him by ordinances of the Council, but nothing shall prevent the Council from transferring to other officers matters in charge of the City Auditor and Comptroller which do not relate directly to the finances of the City. He shall prepare and submit to the City Manager such information as shall be required by the City Manager for the preparation of an annual budget. He shall appoint his subordinates subject to the Civil Service provisions of this Charter.
(Amendment voted 06-04-74; effective 08-13-74.)
(Section 39 is modified by contrary language in Charter sections 265(b)(10) and 265(b)(11) during the operative period of Charter Article XV.)"

"SECTION 68.
BUDGET AND ACCOUNTING SYSTEM.
A complete budget and accounting system of municipal receipts and expenditures is hereby established.
(Amendment voted 04-21-53; effective 05-29-53.)"

"SECTION 69. FISCAL YEAR AND MANAGER'S ESTIMATE.
The fiscal year of the City shall begin with the first day of July and shall end with the next succeeding 30th day of June. On or before the first meeting in May of each year the Manager shall prepare and submit to the Council a budget of the expense of conducting the affairs of the City for the ensuing fiscal year. Departments not under

the Manager shall submit their annual budget estimates to the Manager, or to such official as he may designate, and in such form as he shall require on or before April 1 for transmittal in proper form by the Manager to the Council. The budget shall include a summary outline of the fiscal policy of the City for the budget year, describing in connection therewith the important features of the budget plan; a general budget summary setting forth the aggregate figures of the budget in such manner as to show the balanced relations between the total proposed expenditures and the total anticipated income and other means of financing the budget for the ensuing year, contrasted with corresponding figures for the current year. The classification of the estimate shall be as nearly uniform as possible for the main divisions of all Departments and shall furnish necessary detailed fiscal information.

The Council shall provide for printing a reasonable number of copies of the estimate thus prepared, for examination or distribution to citizens at least fifteen days before final passage. Copies shall also be furnished to the newspapers of the City and to each library thereof which is open to the public.
(Amendment voted 11-06-62; effective 01-21-63.)
(Amendment voted 11-04-69; effective 01-29-70.)"

"SECTION 70. POWER TO FIX SALARIES.
The Council shall have the power to fix salaries of the City Manager, the City Clerk, the City Treasurer, the City Auditor and Comptroller, and all other officers under its jurisdiction. All members of Commissions shall serve without compensation except where otherwise provided by State law or this Charter. Except as otherwise provided by law, the City Manager and other departmental heads outside of the departments under control of the City Manager shall have power to recommend salaries and wages subject to the personnel classification determined by the Civil Service Commission, of all other officers and employees within the total amount contained in the Annual Appropriation Ordinance for personal service in each of the several departments of the City Government. All increases and decreases of salary or wages of officers and employees shall be determined at the time of the preparation and adoption of the budget, and no such increase or decrease shall be effective prior to the fiscal year for which the budget is adopted; provided, however, that if during any fiscal year, the Council should find and determine that because of a significant change in living costs, the salaries and wages fixed for such fiscal year are not comparable to the level of other salaries and wages of other public or private employments for comparable services and as a result, the best interests of the City are not being protected or are in jeopardy, said Legislative Body, upon recommendation of the City Manager or other department head, and if funds are available, may revise such salary and wage schedules to the extent necessary to protect the City's interests.
(Amendment voted 03-13-51; effective 03-26-51.)
(Amendment voted 11-08-77; effective 01-20-78.)"

"SECTION 74. APPROPRIATION REQUIRED FOR CITY DEBT.
An appropriation on account of the debt of the municipality, at least equal to the amount or amounts, estimated by the Manager to be required for the purpose, shall be included in each Annual Appropriation Ordinance passed by the Council. If for any reason the Council fail to include such an appropriation in the Annual Appropriation Ordinance or shall appropriate for the debt of the municipality less than estimated by the Manager to be required for that purpose, or less than that actually required for that purpose, the Auditor and Comptroller shall nevertheless cause to be set up, an appropriation account for the full amount so estimated or

actually required and shall, notwithstanding any other appropriation made by the Council, transfer to such account out of any moneys of the municipality derived from taxes and paid into the Treasury, such amount or amounts as may be necessary to bring the appropriation for the City debt up to the full amount of the Manager's estimate or the sum actually required.

Any taxpayer of the City or owner of any bond thereof may bring suit against the Auditor and Comptroller in the Superior Court to enforce the provisions of this section and if, upon such suit, it be found that the Council has failed to make an appropriation for the full amount estimated by the Manager and actually required for the City debt and that the Auditor and Comptroller has failed to set up the appropriation account and provide for transfers thereto as required by this section, the court shall order the establishment of such appropriation account and the necessary transfers thereto as hereinbefore provided. And such action by the court shall have the same force and effect in regard to appropriations for the City debt as though taken by the Council in the Annual Appropriation Ordinance."

"SECTION 75. ANNUAL TAX LEVY.
The Council shall adopt, not later than the last day in August of each year, an ordinance levying upon the assessed valuation of all property in the City, a rate of taxation sufficient to raise the amount estimated to be required in the annual budget and as herein provided, less the amounts estimated to be received from fines, licenses, and other sources of revenue, using as a basis the value of the property as assessed by the County Assessor, as the same may be equalized and returned to the Council by County Auditor as provided by general law. The Council shall immediately thereafter transmit to the County Auditor of the County of San Diego, a statement of such rate or rates so fixed by it.
(Amendment voted 11-04-75; effective 12-01-75.)"

"SECTION 80. MONEY REQUIRED TO BE IN TREASURY.
No contract, agreement, or other obligation, involving the expenditure of money out of appropriations made by the Council in any one fiscal year shall be entered into, nor shall any order for such expenditure be valid unless the Auditor and Comptroller shall first certify to the Council that the money required for such contract, agreement or obligation for such year is in the treasury to the credit of the appropriation from which it is to be drawn and that it is otherwise unencumbered. The certificate of the Auditor and Comptroller shall be filed and made a matter of record in his office and the sum so certified as being in the treasury shall not thereafter be considered unencumbered until the City is discharged from the contract, agreement or obligation. All unencumbered moneys actually in the treasury to the credit of the appropriation from which a contract, agreement or obligation is to be paid and all moneys applicable to its payment which before the maturity thereof are anticipated to come into the treasury to the credit of such appropriation shall, for the purpose of such certificate, be deemed in the treasury to the credit of the appropriation from which the contract, agreement or obligation is to be paid.
(Amendment voted 06-04-68; effective 07-22-68.)"

"SECTION 92. BORROWING MONEY ON SHORT TERM NOTES.
Bonds or notes may be issued in anticipation of the collection of special assessments, and bonds, notes, or registered warrants on the treasury may be issued in anticipation of the collection of taxes and revenues, as authorized by the City Council by resolution and shall not be deemed the creation of debt within the meaning of Section 90 of this Article. Bonds, notes or registered warrants on the treasury issued

in anticipation of the collection of the taxes and revenues of any fiscal year may be issued during each fiscal year and each such bond, note, or warrant shall specify that it is payable out of the taxes of the fiscal year in which issued, and shall not bear a higher rate of interest than the maximum rate established by Council Resolution within the legal limit, and the total amount of such bonds, notes or warrants, authorized and issued in any fiscal year shall not, in the aggregate, be more than twenty-five (25) per cent of the total appropriations of the City for such year. Nothing herein contained shall be construed to authorize the incurring of an obligation against the municipality in excess of that authorized to be incurred by the Constitution of the State of California.
(Amendment voted 11-06-62; effective 01-21-63.)
(Amendment voted 09-21-65; effective 02-10-66.)
(Amendment voted 06-03-80; effective 07-16-80.)
(Amendment voted 11-06-90; effective 02-19-91.")

"SECTION 99. CONTINUING CONTRACTS.
The City shall not incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year unless the qualified electors of the City, voting at an election to be held for that purpose, have indicated their assent as then required by the Constitution of the State of California, nor unless before or at the time of incurring such indebtedness provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also provision to constitute a sinking fund for the payment of the principal thereof, on or before maturity, which shall not exceed forty years from the time of contracting the same; provided, however, anything to the contrary herein notwithstanding, when two or more propositions for incurring any indebtedness or liability are submitted at the same election, the votes cast for and against each proposition shall be counted separately, and when the qualified electors of the City, voting at an election for that purpose have indicated their assent as then required by the Constitution of the State of California, such proposition shall be deemed adopted. No contract, agreement or obligation extending for a period of more than five years may be authorized except by ordinance adopted by a two-thirds' majority vote of the members elected to the Council after holding a public hearing which has been duly noticed in the official City newspaper at least ten days in advance.
(Amendment voted 04-22-41; effective 05-08-41.)
(Amendment voted 06-04-68; effective 07-22-68.)"

SECTION 290 (b)(2)(B)
"The Council shall thereafter have five business days within which to override any vetoes or modifications made by the Mayor pursuant to Section 290(b)(2)(A). Any item in the proposed budget that was vetoed or otherwise modified by the Mayor shall remain as vetoed or modified unless overridden by the vote of at least five members of the Council. In voting to override the actions of the Mayor, the Council may adopt either an amount it had previously approved or an amount in between the amount originally approved by the Council and the amount approved by the Mayor, subject to the balanced budget requirements set forth in section 71."

[The City Attorney representative present at a meeting of our Subcommittee has pointed out that there is no actual requirement of a balanced budget under Section 71 of the Charter.]

ATTACHMENT P
MEMORANDUM ON BALANCED BUDGET

MEMORANDUM

To: Lisa Briggs
From: James Ingram
Re: A Charter-Mandated Balanced Budget
Date: August 23, 2007

The Independent Budget Analyst's (IBA's) Office has indicated that some of the language that staff recommended on the basis on the New York City and San Francisco processes "goes far beyond the balanced budget issue and gets deep into process, authority levels, reserves policies, etc" (August 21, 2007 email from Andrea Tevlin re: "Comments on Balanced Budget Memo"). The IBA has indicated that it may be preferable to adopt some of the language within some of these city charters, but not to go into such detail. Specifically, her email indicated that there is proposed language

> …imbedded in the memo which may be worth considering.
>
> The San Francisco Model on page 1 states:
>
> "The annual proposed budget and appropriations ordinances shall be balanced so that the proposed expenditures of each fund do not exceed the estimated revenues and surpluses of that fund."
>
> The New York City Model on page 6 states:
>
> "The operations of the City shall be such that, at the end of the fiscal year, the results thereof shall not show a deficit when reported in accordance with generally accepted accounting principles."

The IBA did indicate that her "Office would need considerable additional time to evaluate the impacts of adding the sections into the San Diego City Charter that address other issues beyond requiring a balanced budget."

Given the concerns raised by the IBA's office, staff recommends examination of the IBA's excerpts from the San Francisco and New York City models as a starting point for the discussion on balanced budget. Specifically, staff would recommend the New York City excerpt as a basis from which to consider Charter language. The New York City language is flexible because it allows change along with alterations in GAAP. Secondly, the New York model requires year-end balance, which is a more rigid standard than mandating that budgets be balanced when recommended by the Mayor and adopted by the Council. If the Subcommittee disagrees with this assessment, staff will assist with preparing more detailed Charter language.

ATTACHMENT Q
MEMORANDUM ON SECTION 117

Memorandum

To: Julie Dubick
From: James Ingram
Re: Sections 57 and 58 of the Charter
Date: June 28, 2007

Per the Subcommittee on Duties of Elected Officials' request for an indication of the City Attorney's opinion on the implications of managed competition for public safety members, I requested clarification from the City Attorney's Office. Catherine Bradley emailed me a copy of the City Attorney's October 9, 2006 Report on Resolution of Intent of Managed Competition. The Report suggested language to be adopted to clarify that the City does not intend to subject the services provided by sworn personnel to managed competition.

The language of the resolution was as follows: "BE IT RESOLVED by the Council of City of San Diego, that the City Council and Mayor hereby declare their intent that services provided by City police, fire, and lifeguard service safety members will not be subject to Managed Competition because it is not in the public interest to contract out these safety services to an independent contractor."

Perhaps this language could be added into Charter Section 117 as subsection (d):

"The services provided by City police, fire, and lifeguard service safety members will not be subject to Managed Competition."

However, the Subcommittee indicated that its membership felt that they would not want to prevent some types of subcontracting that the City now does, and that they thought this was a matter for either another Subcommittee or the Committee of the Whole.

ATTACHMENT R
REPORT ON CITY ATTORNEY

Subcommittee on Duties of Elected Officials
Report on the City Attorney's Office by James Ingram

The History of the San Diego City Attorney's Office

In 1889, San Diego established its first City Attorney's office, and prescribed that its head be an appointed official.[33] The office emerged as a part of the City's first "home rule" Charter. On December 5, 1888, San Diego's voters had elected a Board of Freeholders to draft such a Charter. The Freeholders completed the document on January 10, 1889, the voters ratified it on March 2, 1889, and the City "constitution" became effective when the state legislature approved it two weeks later (although most of the organic law did not take effect until the first Monday in May 1889). The 1889 Charter established a CEO-Mayor, a bicameral legislature, an elected Treasurer, an Auditor appointed by the Mayor with confirmation by the Common Council's lower house, and a City Attorney appointed by the Common Council for a two-year term.

In 1905, the City's voters amended the Charter to move to a unicameral legislature. Four years later, the public scrapped the Mayor-Council form of government and moved to the commission plan, the charter reform that was then the latest fad.[34] In 1915, the City repealed the commission form of government, and moved back to the Mayor-Council system. In 1929, a group of reformers tried to persuade the voters to follow the latest trend, toward Council-Manager government, but the electorate balked at this proposal. Although some have attributed the defeat of the 1929 Charter to its provisions for an appointed City Attorney, the fact is that the harbor-related Charter language the 1929 Board of Freeholders proposed was the aspect voters found most troubling.

Former San Diego City Attorney and Judge Shelley J. Higgins, who worked for both the 1929 and 1931 Freeholders, recorded these events: "More and more sentiment developed for adoption of a new charter modeled along competent lines to give us a city manager form of administration. This sentiment crystallized in 1929 with the election of a board of freeholders to draw up such a charter. The freeholders did draw up a city manager-type charter. But the powers they proposed to confer upon the manager excited fierce opposition. For one, the 1929 proposal made nearly a clean sweep of placing city departments under the manager, the list including even the traditionally independent harbor department. Friends of the existing harbor program opposed the new charter heatedly, on the ground that for 30 years the harbor had been developing into a splendid port simply because it was under the direction of commissioners and that such service could not be counted on from a salaried professional manager."[35]

In 1931, the voters approved the new Charter proposed by yet another elected Board of Freeholders. Like the unsuccessful 1929 proposal, the 1931 Charter

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[33] Technically, San Diego did have an elected City Attorney under the 1850 charter that the State of California drafted for the City, but the office was ended when the City went bankrupt in 1852, and the state legislature dissolved the government.

[34] In 1905, voters also opted to elect the City Attorney; in 1909, they restored the office's appointive status. Thus, out of the nearly eight decade-period from 1850-1931, the City Attorney was only an elected officer for about six years (1850-1852, 1905-1909).

[35] Shelley J. Higgins, as told to Richard Mansfield, *This Fantastic City: San Diego; Official City Policy History, Combining Factual Backgrounds with Evolution and Course of Municipal History, Lightened and Enlivened by Illustrations and Incidents Reflective and Typical of the Times*, San Diego: City of San Diego, 1956, p. 259.

provided for a Council-Manager form of government. One of the other innovations in the 1931 Charter was that it changed the City Attorney, which had been appointed from 1889-1905 and 1909-1929, into an elective officer. Some have implied that this alteration accounts for the ratification of the 1931 Charter. In fact, Shelley Higgins, who worked in the City Attorney's office off and on for his whole career from 1914 until his death in 1956, reported that other issues, such as the harbor, were decisive.[36] Higgins noted in his autobiography (which was such an important document that the City Council published it as San Diego's "Official City Policy History") that the independent commissions governing "the harbor, civil service, parks, and planning" were key to the 1931 Charter's victory.[37] As one of the quotations in the Aguirre report demonstrates, the San Diego Union Tribune even argued that making the City Attorney an elected officer was unwise.[38]

The City Attorney's Office won the most important cases in San Diego's history when the office was managed by an appointee. For instance, Deputy, Assistant, and official City Attorney Shelley Higgins won the "paramount rights" water cases that rescued the City's water rights from private companies and other cities. The six cases on water rights that Higgins won up to 1930 established the City's paramount right to the San Diego River, and the right to build the El Capitan Dam and Pipeline.[39] Higgins was so good a municipal attorney that he was the person who realized that the way to allow San Diego to expand to the south and enhance both its water and harbor interests was to annex an underwater shoestring of land down the middle of the San Diego Bay. That is why it is legal for the southern portion of San Diego to be part of the City even though it appears not to be physically connected to the rest of the City (California law mandates that in order to annex an area into a city, that area must be physically connected to the city). Higgins and the other

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[36] On April 26, 2005, the City Attorney's Office released a "Report on the Role of the City Attorney as Independent Representative of the People of San Diego" (hereinafter, "Aguirre Report"). As the Aguirre Report correctly indicates, Judge Higgins actually opposed the decision to elect the City Attorney when he worked with the 1931 Board of Freeholders. During his work for the previous (1929) Board of Freeholders, both Higgins and its other counselors had advised that it was problematic to move authority over appointment of the City Attorney from the Council to the City Manager. In counseling the 1931 Freeholders, Higgins advocated appointment rather than election as the preferred method for selecting a City Attorney. Higgins explained that appointment was better because of "the necessity for San Diego to have an attorney who is qualified to understand the city's water situation and who is sufficiently competent with special water laws. The council, he said, would be able to choose that kind of an attorney, whereas the voting public might elect a man who would be incompetent." This quotation is from Aguirre Report, Exhibit No. 20: "Lawyer Opposes Elective Feature of City Attorney," December 4, 1930 news article (newspaper unspecified). See also Higgins, p. 260 and Aguirre Report, p. 10.

[37] See Higgins, p. 261, which also indicates that it was important that the 1931 Charter did not subject the City Attorney, City Clerk, Auditor and Comptroller and Civil Service to the administrative authority of the City Manager.

[38] See p. 15 of the Aguirre Report, which quotes the newspaper article: "The freeholders have departed from the accepted rules even more widely-and, in our opinion, less wisely-in providing that the city attorney shall be an elective officer."

[39] Higgins argued these Paramount Rights water cases before the California Supreme Court. The two most important cases were: *The City of San Diego* (a Municipal Corporation)*, Plaintiff and Appellant, v. Cuyamaca Water Company* (a Corporation) *Et Al., Defendants and Appellants; The City of El Cajon* (a Municipal Corporation) *Et Al., Interveners and Appellants*, 209 Cal. 105, March 21, 1930; *The City of San Diego* (a Municipal Corporation)*, Respondent, v. The Cuyamaca Water Company* (a Corporation) *Et Al., Defendants and Appellants; La Mesa Lemon Grove and Spring Valley Irrigation District Et Al., Interveners and Appellants*, 209 Cal. 152, March 21, 1930.

members of the City Attorney staff won the cases that made the City as successful as it is, even though the office was led by an appointee.

In establishing an elected City Attorney, San Diego's 1931 Charter followed the Los Angeles model. L.A. had elected its City Attorney ever since 1850, and was one of the few cities in the state that elected this officer at the time.[40] However, one of the differences in the way that San Diego handled the City Attorney's office, as compared to Los Angeles, is that L.A. specified that the City Council would control litigation while San Diego gave the officer a free hand. When Los Angeles amended its Charter in 1999, many of the important changes dealt with the issue of who should control litigation, hold settlement authority and be able to employ outside legal counsel. In each of these areas, the City of Los Angeles placed greater restrictions upon its elected City Attorney.

Since 1931, San Diego's electorate has used charter amendments to make many changes to the office of the City Attorney. In 1943, the voters changed the Charter to provide that if there were a vacancy in the City Attorney's office, the Council could appoint someone to fill it until the next regular municipal election. In 1947, the voters slightly clarified the provisions for appointing someone to fill a vacancy in the office, and changed the Charter to allow the Council to set the City Attorney's salary (it was previously fixed to remain permanently at $6,500 per year, and this instead became the minimum). In 1959, the voters changed the Charter to remove the provision that the City Attorney's salary was to be payable on a semi-monthly basis. In 1963, the voters changed the Charter to provide that the Mayor and City Attorney would be selected at different elections, to clarify the officer's authority to apply for an injunction on behalf of the City, to raise the minimum salary of the City Attorney to $15,000, and to provide that anyone elected to fill a vacancy in the office at the next regular municipal election would only serve the remainder of the unexpired term (to keep the Mayor and City Attorney elections on different cycles). In 1975, the voters changed the Charter to elect the City Attorney in the same election as the Mayor, and in even- rather than odd-numbered years (starting in 1984). In 1992, the voters changed the Charter to limit the City Attorney to two four-year terms. In 2004, the voters changed the Charter to provide that the Ethics Commission would "have its own legal counsel, independent of the City Attorney."[41] In sum, the voters have changed the City Attorney's office ten times through charter amendments approved at seven different elections over the past 76 years.

It is difficult to argue that moving to an elected City Attorney improved the City's legal representation. As indicated above, the appointed City Attorneys won the water cases, and even assisted in putting together the City's water plan, that made it

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[40] In 1850, California's legislature drafted a charter for L.A., and under that document the City Attorney was elected. When L.A. enacted its 1889 home rule charter, it continued to elect the officer, and maintained this practice under new charters passed by that city in 1924 and 1999.

[41] The historical information provided in this paragraph was assembled through a search of the California Statutes for the 1931, 1943, 1947, 1959, 1963, 1975 and 1992 legislative sessions. Staff examined those particular sessions because the Charter lists these dates as when amendments were made to section 40 (although sometimes these are not reliable; for example, according to section 40's annotations, the November 2, 2004 amendment took effect on April 1, 2004; this is absolutely impossible, and appears to be an April Fools' Day joke in the City's Charter). All new charters and charter amendments must be filed with the State of California, and this is thus the most reliable source for tracking charter changes. The nature of the 2004 amendment was obvious, based on a comparison of the 1992 language with the present language, although the 2004 Sample Ballot also contains the information.

possible for the City to grow to its present size. More recently, some of those elected to the office appear not to have been as helpful to the City. For example, in 2004, San Diego conducted an election which cohered with the City's Municipal Code but violated its Charter. The San Diego Municipal Code had been amended in 1986, because in 1985 the California Supreme Court had issued the *Canaan v. Abdelnour* decision, ruling that the City could not prohibit write-in candidates in run-off elections (40 Cal 3d 703 (1985)). Despite changing the Municipal Code, the City failed to change its Charter provisions governing elections. As a result, the City's own Municipal Code was inconsistent with the City's Charter for the next 18 years.[42] If a city changes the Municipal Code which is supposed to implement its Charter in a way which is inconsistent with that Charter, and then fails to alter the Charter, then of course the City's laws will contradict the constitution that authorizes its laws. How is it that the voters were never asked to ballot on a charter change to address the unacceptability of the City's elections process? City Attorney's offices are usually responsible for ensuring that a city's municipal code does not violate its own charter. To allow a conflict to exist merely because of a ruling that state law trumps that of the city risks exactly the situation that occurred in the 2004 election.

The way that the process of court action and charter amendment is supposed to work is illustrated by the City's move to district-based general elections in 1988.[43] In the wake of *Gomez v. Watsonville*, the City of San Diego apparently feared that its system for electing the City Council would not survive a Voting Rights Act challenge.[44] San Diego's election system required that the district's voters narrow the field down to two candidates in the primary; the City at large would then elect one of them to office in the run-off. Since the 1975 extensions of the Voting Rights Act, the courts have often ruled that at-large election systems cause minority vote dilution, and consequently required cities to overhaul them. Based on the possibility that San Diego's election system might be deemed unacceptable, and concerns that it was fundamentally unfair to diverse communities, the City acted to change it. At the next election, the ballot included a charter amendment, and in approving it the public established a pure district-based election system for the Council. Why wasn't the *Canaan v. Abdelnour* case handled in the same manner? After all, City Attorney John Witt was an experienced elected official. With 36 years of service in that capacity, Witt still holds the record for serving the longest as an elected San Diego official. How did the City fail to do the right thing on the write-in elections case?

Comparative Examination of City Attorney's Office

San Diego Charter section 40 identifies the City Attorney as the City's "chief legal adviser". Such language begs comparison to the United States Attorney General, an

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[42] The California Supreme Court seems to have changed its position on this issue, because in the 2002 case of *Edelstein v. City and County of San Francisco* (29 Cal. 4th 164) the court apparently restored to the City the right to govern its elections as a municipal affair. At this point, the conflict between the City's Charter and Municipal Code became a major problem because the Charter was no longer preempted in this area by state law. See the City Attorney's January 21, 2005 Memorandum of Law on the "Applicability of California State Law Requiring Marking of Oval Next to a Write-In Candidate's Name to the City of San Diego's November 2, 2004 Mayoral Election."

[43] Staff research into this area indicates that prior to his election as City Attorney, Michael Aguirre participated in bringing about San Diego's move to our present system of electing Council members through his representation of the Chicano Federation.

[44] *Gomez v. Watsonville*, 863 F.2d 1407, July 27, 1988.

office established by President George Washington to act as the new nation's chief legal adviser. The Attorney General is not elected, but is rather an appointee serving at the pleasure of the President. When President Washington named the first Cabinet in 1789, its membership included only the secretaries of State, Treasury and War, as well as the Attorney General. Pursuant to Article II of the United States Constitution, the President appointed these officers, subject to the consent of the U.S. Senate. The 1789 Judiciary Act spelled out some of the duties of the Attorney General, but it was not until 1870 that the creation of the Department of Justice placed a Cabinet-level department under the Attorney General's control.

The appointment of the Attorney General is relevant here because it is arguably the chief legal officer for the nation. In selecting that officer, the United States has never turned to elections. Likewise, appointment is the method by which most cities select their chief legal officer, often called the Corporation Counsel. Only a few cities have not followed the federal model, and have diverged by electing their City Attorney. San Diego is one of a small number of cities with elected City Attorneys rather than appointed legal counsel.

It is not surprising that the City of San Diego elects its City Attorney because San Diego is a California city. The State of California has many governmental attorneys who are elected rather than appointed. For example, the state elects the Attorney General rather than making that officer a gubernatorial appointee confirmed by the state legislature. In fact, California elects more of its executive branch officers than do most of the States in the Union. There are 8 executive officers elected statewide in California—the Governor, Lieutenant Governor, Attorney General, Controller, Treasurer, Superintendent of Public Instruction, Secretary of State, Insurance Commissioner (and some argue that the state's "plural executive" is actually 12 members, counting the four elected members of the Board of Equalization).

California has also demonstrated a preference for electing many non-legislative officers at the local level. For example, California counties elect their Sheriffs, District Attorneys and Assessors. California cities have elected even larger numbers of municipal officers outside the legislative branch. For instance, when Los Angeles voters ratified the first home rule charter in California (and the second in the nation), they provided for nine officers elected citywide—the Mayor, City Clerk, City Attorney, City Treasurer, City Auditor, City Tax and License Collector, City Engineer, Street Superintendent, and City Assessor (not to mention the two elected police judges and the Board of Education).

The election of the City Attorney seems to be a uniquely Californian innovation. In its 1998 study of City Attorneys, the Los Angeles Charter Reform Commission found that "no major U.S. city located outside California elects its City Attorney...." However, the commission did find that "four out of the five largest California cities have an elected City Attorney...." [45] Yet even in California, it is not common municipal practice to elect City Attorneys. Only 11 of the state's 478 cities elect their City Attorneys. They are Albany, Compton, Huntington Beach, Long Beach, Los Angeles, Oakland, Redondo Beach, San Bernardino, San Diego, San Francisco and

[45] Both quotes are from Los Angeles City, Charter Reform Commission, *Reforming the Los Angeles City Charter: Road to Decision*, 1997, Page A 3.

San Rafael.[46] Six of the cities that do elect their City Attorneys are large by California's standards, but the other five are not.

San Diego deviates from standard national practice in more than merely electing the City Attorney. In its 1998 study of City Attorneys, the Elected Los Angeles Charter Reform Commission found that:

> In the vast majority of cities in the United States, the attorney's primary role is to act as 'chief legal advisor' to the Mayor and Council and city departments. Unless the Charter prescribes prosecutorial power to the city attorney, prosecutions are handled by the District Attorney of the County. Litigation is usually under the supervision of the Mayor and Council. However, in those other (smaller) cities, the Mayor and Council are one governing body with city departments reporting either to the Mayor and Council as a body or through the City Manager. Many cities contract with private municipal law firms when litigation arises.
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> The model for New York, the only U.S. city larger than Los Angeles, was discussed by the Committee. The corporate counsel for New York reports to the Mayor and is responsible for citywide matters of litigation. Each department has its own counsel. Each elected official has staff counsel. There are no elected attorneys. All prosecutions are handled by the District Attorney.
>
> The legal functions of Los Angeles County are handled the same as they are in all other counties in California. The elected District Attorney handles prosecutions. The appointed County Counsel provides legal advice and supervises litigation. County Counsel reports to the Board of Supervisors.[47]

Both the elected and the appointed Los Angeles charter reform commissions engaged in a serious discussion of the election of the City Attorney and the authorization of that officer to handle both civil and criminal litigation. In their research, both commissions found that Los Angeles was quite unlike most United States cities. San Diego is one of the very few cities whose City Attorney's office resembles the Los Angeles model.

Potential Problems with the Election of City Attorneys

A recent law review article examined San Diego's ongoing pension controversy. In her essay on "Solutions to the City Attorney's Charter-Imposed Conflict of Interest Problem," Heather Kimmel used San Diego as a case study:

"The San Diego city attorney is bound by San Diego's charter to represent and advise the city and all of its departments and officers, including the city council, in all legal matters. The city attorney announced that he would open his own investigation into the city employees' fraudulent accounting and withholding of information from financial documents, independent of an investigation authorized by the city council,

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[46] Oakland became the 11th city with an elected City Attorney in 2000. See the California League of Cities for this information: www.cacities.org.

[47] The Elected Los Angeles Charter Reform Commission, Committee on Improving the Structure of Government, *Report on Office Functions of the City Attorney*, Los Angeles, June 8, 1998, p. 2.

which hired an outside law firm to do the work. He also announced that he would reopen the public integrity unit of the city attorney's office, which is responsible for prosecuting city employees for misdemeanors of fraud, waste, and abuse of city resources. According to the charter, the city attorney represents, in their official capacities, the top officials implicated by the federal investigations, and also represents those city government officials who wish to expose and correct the wrongdoing. Both clients have vastly different interests. For whom should the city attorney advocate?"[48]

The California State Bar's Rules of Professional Conduct are very clear on such as issues as attorney-client privilege, and how an attorney is to act when representing a client that is an organization. But those rules become very difficult to apply when it comes to elected City Attorneys who are responsible to the City and must provide its officials with legal counsel. As Kimmel states, "City charters often require the city attorney and her staff of assistant city attorneys to provide legal advice and representation to the city council, the mayor, and city departments and agencies. When these government bodies have different goals for the city as a whole, a conflict of interest may occur for the city attorney. An attorney in private practice can avoid this conflict of interest situation by declining to represent a potential client if the representation would result in a conflict of interest. The city attorney usually has no such option."[49]

All attorneys must act under the Rules of Professional Conduct, and private corporations are advised by counsel, so why would the position of a government attorney be difficult? Kimmel explains: "Identifying the client of the government lawyer is a threshold issue for determining whether a conflict of interest exists. Like a private corporation, a government client is an organization, and the lawyer represents the interests of the organization as a whole. Because an organization cannot speak for itself, the lawyer takes direction from the organization's authorized representatives. A private corporation is usually easily identifiable as a discrete entity with certain constituents who are always authorized to speak for the corporation, making it fairly simple for an attorney hired by a corporation to identify her client and those individuals responsible for advancing its interests. Because of the many levels of government and changing circumstances of representation, it is often more difficult to identify the government lawyer's client with certainty. For example, the client of a federal government agency lawyer could be the federal government as a whole, the executive branch of government, the President of the United States, the public, or the agency for which the lawyer works."[50]

In examining this issue, Kimmel found that there are three models for dealing with this dilemma. The first holds that the public interest is the client, but this is problematic: "Saying that the government attorney's client is the public interest is easy; it even sounds right—of course the government exists for the public. Though it may sound superficially reasonable, many legal commentators have rejected as unworkable the once-popular idea that the government attorney serves the public interest, because the public interest is not universally defined. The government lawyer's supervisor, the lawyer, and the elected officials involved may all have

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[48] The article is in the *Ohio State Law Journal*, Volume 66, pp. 1075-1104, 2005. This passage is on p. 1076.
[49] Kimmel, p. 1075.
[50] Kimmel, p. 1079.

conflicting ideas about what is in the public interest."[51] This becomes even more tangled, of course, when the government's lawyer is an elected official.

The second model would be to regard the whole government as the client, but this is also untenable: "Identifying the client as the whole government, however, is not useful because it does not identify from whom a government attorney should take, or seek, direction and guidance. The legislative, executive, and judicial government branches frequently have competing interests. This is true at the federal, state, and local levels. The government lawyer must identify a single government position to advance, or at least non-conflicting positions, to represent the entire government. That is an impossible task. Ultimately, this model shares the problems of the public interest model discussed above, in that the attorney cannot know what position to advocate in the case of conflicting positions taken by individuals or branches within the government as a whole."[52] Again, this dilemma is made all the more complex when the government lawyer is an elected official.

The third model is for the attorney to define the client as the government agency that employs him or her: "The model currently favored identifies the government attorney's client as the government attorney's employing agency, narrowing down the client's identity. The Restatement of the Law Governing Lawyers takes this position: "The preferable approach . . . is to regard the respective agencies as the clients and to regard the lawyers working for the agencies as subject to the direction of those officers authorized to act in the matter involved in the representation." Representing a single agency lessens the possibility of conflicts of interests. Like a corporation, the actual client is the agency, but the interests of the agency are determined by the agency officer or department head who has decision-making authority. The agency officer lays out the agency's policy and position, giving the attorney clear guidance as to which interests to advance. If a department head's policy interests conflict with the agency officer's interests within an agency, the attorney is obligated to advance the agency officer's interests. Thus, the agency-as-client model is workable for the government attorney because it narrows the client down to a discrete unit that operates under one policy-making authority."[53] In the case of an elected City Attorney, this is not a solution because the City Attorney heads the government agency that employs him or her.

Kimmel indicates later in the article that none of these models adequately addresses the issue of "whose interests the city attorney should advance in the case of a conflict of interest between her clients who are designated by the city charter."[54] The issue identified by Kimmel remains a problem at present: "The law of ethics for city attorneys in conflict of interest situations is fundamentally unclear. City attorney conflicts of interest have recently been reported in the media with some frequency. Because of the prevalence of such conflicts and the degree of disruption they cause, the problem must be addressed. Although the first requirement in determining whether there is a conflict of interest is to 'clearly identify the client,' no useful model exists that takes account of the city attorney's charter-imposed duty to represent the mayor and the city council at the same time. Considering the city attorney's ethical obligations in the context of the method of her selection and the scope of her representation is helpful in minimizing some types of conflicts of interest, but

[51] Kimmel, p. 1080.
[52] Kimmel, p. 1082.
[53] Kimmel, pp. 1082-1083.
[54] Kimmel, p. 1083.

inadequately addresses other types. Because of this uncertainty, solutions that avoid conflicts of interest need to be explored."[55]

Kimmel contends that a solution would be to give the City Council separate representation: "Providing the city council with its own permanent representation via a charter amendment both clearly identifies the client and at the same time removes the possibility of conflicts of interest when the mayor's interests are different from the council's interests. This is the best solution and one that can be implemented in every city."[56] However, this solution implicitly assumes that the City Attorney reports to the Mayor. This would be correct for the New York model, where the Mayor appoints the chief legal officer without confirmation, and he or she serves at pleasure. In a city with an elected City Attorney, permitting the Council to employ independent counsel still leaves the executive branch in the same quagmire.

Kimmel is not alone in identifying the potential problems faced by governmental attorneys. The League of California Cities has been working on an ethical code for city attorneys.[57] That code states: "The role of the city attorney and the client city varies. Some city attorneys are full-time public employees appointed by a city council; some are members of a private law firm, who serve under contract at the pleasure of a city council. A few are directly elected by the voters; some are governed by a charter. When reflecting on the following principles, the city attorney should take these variations into account."

One way of dealing with the problem is to assign outside legal counsel when the elected City Attorney has a conflict of interest. The San Francisco Charter creates such a procedure: "…any elected officer, department head, board or commission may engage counsel other than the City Attorney for legal advice regarding a particular matter where the elected officers department head, board or commission has reason to believe that the City Attorney may have a prohibited financial conflict of interest under California law or a prohibited ethical conflict of interest under the California Rules of Professional Conduct with regard to the matter…." If there is disagreement as to whether such a conflict of interest exists, the San Francisco Charter authorizes a retired judge to settle the problem: "If the retired judge decides that the City Attorney does not have a conflict of interest regarding the particular matter, the City Attorney shall continue to be the legal adviser to the elected officer, department head, board or commission for such matter. If the retired judge decides that the City Attorney has a conflict of interest regarding a particular matter, the elected officer, department head, board or commission shall be entitled to retain outside counsel for legal advice regarding the particular matter, and the City Attorney shall thereupon cease to advise the elected officer, department head board or commission on such matter. Any such finding of a conflict of interest shall not affect the City Attorney's role as legal advisor to the elected officer, department head, board or commission on all other matters."[58]

Besides the problem of defining the client, and assigning outside legal counsel, San Diego's system for electing and empowering the City Attorney also raises serious

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[55] Kimmel, p. 1104.
[56] Kimmel, p. 1104.
[57] See Ethical Principles for City Attorneys, Adopted October 6, 2005, City Attorneys Department Business Session, at the following URL, accesses on August 22, 2007: www.cacities.org/resource_files/24175.Code%20of%20Ethics%20Final.doc .
[58] Both of these quotes are from the San Francisco Charter, section 6.102.

issues as to who is to control litigation. This issue was an important one in Los Angeles during the 1997-1999 charter reform. Section 42 of Los Angeles' 1925 Charter had placed the Council in control of litigation, but there were situations when the Mayor and executive branch agencies seemed to be the more appropriate focus of client decisions. Consequently, voters amended the Charter to better define the control of litigation:

"**Sec. 272. Control of Litigation.**
The civil client of the City Attorney is the municipal corporation, the City of Los Angeles. The City Attorney shall defend the City in litigation, as well as its officers and employees as provided by ordinance. The City Attorney may initiate civil litigation on behalf of the City or the People of the State of California, and shall initiate civil litigation on behalf of the City when requested to do so by the authority having control over the litigation as set forth below. The City Attorney shall manage all litigation of the City, subject to client direction in accordance with this section, and subject to the City Attorney's duty to act in the best interests of the City and to conform to professional and ethical obligations. In the course of litigation, client decisions, including a decision to initiate litigation, shall be made by the Mayor, the Council, or boards of commissioners in accordance with this section. However, the decision to settle litigation shall be made in accordance with Section 273.
(a) **Council.** The Council shall make client decisions in litigation involving matters over which the Charter gives the Council responsibility.
(b) **Mayor.** The Mayor shall make client decisions in litigation involving matters over which the Charter gives the Mayor responsibility.
(c) **Boards.** The boards of the Proprietary Departments, the Ethics Commission, the Board of Fire and Police Pension Commissioners, the Board of Administration of the Los Angeles City Employees Retirement System, and the Board of Administration of the Water and Power Employees Retirement System shall make client decisions in litigation exclusively involving the policies and funds over which the Charter gives those boards control.
(d) **Interpretation of Section.** The City Attorney shall have the authority to make the determination regarding who is authorized to make client decisions on behalf of the City in accordance with the principles of this section and accepted principles of representation of municipal entities.

Sec. 273. Settlement of Litigation.
(a) **Boards.** The boards of the Proprietary Departments, the Ethics Commission, the Board of Fire and Police Pension Commissioners, the Board of Administration of the Los Angeles City Employees Retirement System and the Board of Administration of the Water and Power Employees Retirement System shall have the authority to approve or reject settlement of litigation exclusively involving the policies and funds over which the Charter gives those boards control. The settlement of all other litigation shall be in accordance with subsections (b) and (c) of this section.
(b) Settlements Involving Only Money Damages.
(1) The Mayor shall have authority to approve or reject settlements involving only the payment or receipt of money damages not exceeding an amount set by ordinance, and shall make client decisions with respect to settlement of such litigation. The Mayor may delegate this authority to the City Attorney.
(2) A claims board comprised of the Mayor as chair, the President of the Council and the City Attorney, or their designees, shall have the authority to approve or reject settlement of litigation involving only the payment or receipt of money damages exceeding the amount that is within the Mayor's authority under the

preceding subsection, and below an amount set by ordinance. The claims board shall make client decisions with respect to settlement of such litigation.
(3) The Council shall have the authority to approve or reject settlement of litigation that involves only the payment or receipt of money damages exceeding the amount that is within the authority of the claims board under the preceding subsection, subject to veto of the Mayor, and Council override of the Mayor's veto by a two-thirds vote of the Council. The Council shall make client decisions with respect to settlement of such litigation. The claims board shall make recommendations to the Council concerning settlement of litigation within the scope of this subsection.
(c) Other Settlements. The Council shall have the authority to approve or reject settlement of litigation that does not involve only the payment or receipt of money, subject to veto of the Mayor, and Council override of the Mayor's veto by a two-thirds vote of the Council."

Los Angeles' new charter addresses the issue of who is the client and who is to make client decisions, control litigation, and accept settlement offers. This allows the Mayor's Office to make some provisions for risk assessment, and to attempt to save Los Angeles money on costly lawsuits. San Diego's Charter is more problematic today than was Los Angeles' old charter on these issues. San Diego Charter section 40 does not define who is the client and who is to control litigation, as section 42 of Los Angeles' 1925 Charter did. This could present serious problems for the City of San Diego. Should the Subcommittee decide to amend Charter section 40, these are at least a few of the issues that may need to be addressed.

Other Cities' Charters

New York City Charter[59]

§ 391. **Department; corporation counsel.** There shall be a law department the head of which shall be the corporation counsel.

§ 392. **Assistants.** a. The corporation counsel may appoint a first assistant corporation counsel and such other assistants as may be necessary within the appropriation therefor.
b. The first assistant corporation counsel shall, during the absence or disability of the corporation counsel, possess all the powers and perform all the duties of the corporation counsel and in case of the death or the corporation counsel or of a vacancy in that office shall act as corporation counsel until the appointment and qualification of a corporation counsel.
c. Any assistant shall, in addition to the duties regularly assigned to him or her, possess such of the powers and perform such of the duties of the corporation counsel as the corporation counsel shall empower such assistant to exercise by written authority filed and remaining on record in the department.

§ 393. **Offices.** The corporation counsel may maintain an office in each of the boroughs or any of them.

§ 394. **Powers and duties.** a. Except as otherwise provided in this chapter or other law, the corporation counsel shall be attorney and counsel for the city and

[59] In New York City, the Corporation Counsel is appointed by, and serves at Mayor's pleasure. See http://www.nyc.gov/html/law/html/about/about.shtml.

every agency thereof and shall have charge and conduct of all the law business of the city and its agencies and in which the city is interested.

b. Except as otherwise provided in this chapter or other law, the corporation counsel shall have charge and conduct of the legal proceedings necessary in opening, widening, altering and closing streets and in acquiring real estate or interests therein for the city by condemnation proceedings, and the preparation of all leases, deeds, contracts, bonds, and other legal papers of the city, or of or connected with any agency or officer thereof, and the corporation counsel shall approve as to form all such deeds and bonds and, individually or by standard type of class, all contracts, leases and other legal papers.

c. Except as otherwise provided in this chapter or other law, the corporation counsel shall have the right to institute actions in law or equity and any proceedings provided by law in any court, local, state or national, to maintain, defend and establish the rights, interests, revenues, property, privileges, franchises or demands of the city or of any part or portion thereof, or of the people thereof, or to collect any money, debts, fines or penalties or to enforce the laws. The corporation counsel shall not be empowered to compromise, settle or adjust any rights, claims, demands, or causes of action in favor of or against the city, and shall not permit, offer or confess judgment against the city, or accept any offer of judgment in favor of the city without the previous approval of the comptroller, except that with regard to matters involving excise and non-property taxes, such previous written approval shall be obtained from the finance administrator; provided, however, that this inhibition shall not operate to limit or abridge the discretion of the corporation counsel in regard to the proper conduct of the trial of any action or proceeding or to deprive such corporation counsel of the powers and privileges ordinarily exercised in the courts of litigation by attorneys-at-law when acting for private clients.

§ 395. **Legal service to agencies.** The corporation counsel may assign an assistant or assistants to any agency. The head of each agency, within appropriations for such purpose, may employ staff counsel to assist in the legal affairs of the agency. No officer or agency, except as provided in this chapter or otherwise especially provided, shall have or employ any attorney or counsel, except where a judgment or order in an action or proceeding may affect such officer or agency individually or may be followed by a motion to commit for contempt of court, in which case such officer or agency may employ and be represented by attorney or counsel at their own expense.

§ 396. **Actions and proceedings for recovery of penalties.** All actions and proceedings for the recovery of penalties for the violation of any law shall be brought in the name of the city of New York and not in that of any agency, except where otherwise provided by law.

§ 397. **Delegation of legal authority.** a. The mayor may delegate to any agency, after consultation with the corporation counsel and the head of the agency, responsibility for the conduct of routine legal affairs of the agency subject to standards, policies, and guidelines of the corporation counsel, and consistent with city-wide controls and uniformity. The mayor may transfer or assign attorneys from the law department to the agency to assist in the conduct of such delegated functions. The corporation counsel shall monitor and evaluate on a regular and continuous basis the exercise of authority delegated pursuant to this section and the mayor, on recommendation of the corporation counsel, may suspend or withdraw any delegated authority whenever in his or her judgment the interests of the city justify such action.

b. Nothing contained in this section shall abrogate the authority of the corporation counsel as attorney and counsel for the city and every agency of the city.

§ 398. **Ex parte administrative warrants.** If entry to a location or premises to be inspected pursuant to an agency's powers and duties is not gained on consent, or if circumstances call for entry without prior notice, the commissioner of such agency, or his or her authorized representative, may request the corporation counsel to make an application, ex parte, in any court of competent jurisdiction for an order directing the entry and inspection of such premises or location and, in accordance with applicable law, to abate any nuisance thereon. Nothing in this section shall be construed to limit, abridge, affect or amend the power of an agency under law, including state, local or case law, to enter and inspect any location or premises or abate any nuisance thereon, either with or without a warrant, to carry out any of its functions, powers and duties.

Philadelphia Charter

Section 3-203
City Solicitor
The Mayor, with the advice and consent of a majority of all the members of the Council, shall appoint the City Solicitor.

Section 3-101
Department Heads.
Each department shall have as its head an officer who is either personally or by a duly authorized agent or employee of the department, and subject at all times to the provisions of this charter, shall exercise the powers and perform the duties vested in and imposed upon the department.
The following officers shall be the heads of the departments following their respective titles:
City Solicitor, of the Law Department;
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Section 3-102
The Mayor's Cabinet.
The Mayor's Cabinet shall consist of the mayor, the Managing Director, the Director of Finance, the City Solicitor and the City Representative.

Section 4-400
Functions.
The Law Department shall have the power and its duty shall be to perform the following functions:
Legal Advice. It shall furnish legal advice to the Mayor, to the Council and to all officers, departments, boards and commissions concerning any matter or thing arising in connection with the exercise of their official powers or performance of their official duties and except as otherwise expressly provided, shall supervise, direct and control all of the law work of the City.
Litigation. The Department shall collect by suit or otherwise all debts, taxes and accounts due the City which shall be placed with it for collection by any officer, department, board or commission, and it shall represent the City and every officer, department, board or commission in all litigation. It shall keep a proper docket, or dockets, duly indexed, in which it shall make and preserve memoranda of all such claims, showing whether they are in litigation and their nature and status.

Contracts and Bonds. The Department shall prepare or approve all contracts, bonds and other instruments in writing in which the City is concerned, and shall approve all surety bonds required to be given for the protection of the City. It shall keep a proper registry of all such contracts, bonds and instruments.
Investigation and Law Enforcement. With the approval of the Mayor, the Department shall investigate any violation or alleged violation within the City of the statutes of the Commonwealth of Pennsylvania or the ordinances of the City which may come to its notice, and shall take such steps and adopt such means as may be reasonably necessary to enforce within the City such statutes and ordinances.
Drafting and Codification of Ordinances. Upon request of the Council or of any councilman, or of the Mayor, the Department shall prepare or assist in preparing any ordinance for introduction into the Council, and within two years after the effective date of this charter, it shall prepare and submit to the Council for its consideration, a comprehensive revision and codification of all the general ordinances of the City which are still in effect.

Section 4-401
Access to Records.
The City Solicitor shall have the right of access at all times to the records of any officer, department, board or commission of the City.

Chicago “Charter”

Illinois Code, Chapter 65. Municipalities, Revised Cities And Villages Act Of 1941, Article 21. Optional -- City Of Chicago, City Officers:

§ 65 ILCS 20/21-11. Corporation counsel
Sec. 21-11. Corporation counsel. The head of the law department of the city shall be the corporation counsel. The corporation counsel shall be and act as the legal adviser of the city council and of the several officers, boards and departments of the city. He shall appear for and protect the rights and interests of the city in all actions, suits, and proceedings brought by or against it or any city officer, board or department, including actions for damages when brought against such officer in his official capacity; provided, however, that when an officer or employee of the city is sued personally, even if the cause of action arose out of his official duties, the corporation counsel shall appear for such officer or employee only in case the city council directs him to do so.

Illinois Code, Chapter 65. Municipalities, Illinois Municipal Code, Article 3.1. Officers, Division 20. Elected City Officers:

§ 65 ILCS 5/3.1-20-40. Other officers; election rather than appointment
Sec. 3.1-20-40. Other officers; election rather than appointment. Instead of providing for the appointment of the following officers as provided in Section 3.1-30-5 [65 ILCS 5/3.1-30-5], the city council, in its discretion, may provide by ordinance passed by a two-thirds vote of all the aldermen elected for the election by the electors of the city of a city collector, a city marshal, a city superintendent of streets, a corporation counsel**,** a city comptroller, or any of them, and any other officers which the city council considers necessary or expedient. By ordinance or resolution, to take effect at the end of the current fiscal year, the city council, by a like vote, may discontinue any office so created and devolve the duties of that office on any other city officer. After discontinuance of an office, no officer filling that office before its discontinuance shall have any claim against the city for salary alleged to accrue

after the date of discontinuance.

Attachment A

Rules of Professional Conduct of the State Bar of California.

Rule 3-310. Avoiding the Representation of Adverse Interests

(A) For purposes of this rule:

(1) "Disclosure" means informing the client or former client of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the client or former client;

(2) "Informed written consent" means the client's or former client's written agreement to the representation following written disclosure;

(3) "Written" means any writing as defined in Evidence Code section 250.

(B) A member shall not accept or continue representation of a client without providing written disclosure to the client where:

(1) The member has a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; or

(2) The member knows or reasonably should know that:

(a) the member previously had a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; and

(b) the previous relationship would substantially affect the member's representation; or

(3) The member has or had a legal, business, financial, professional, or personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by resolution of the matter; or

(4) The member has or had a legal, business, financial, or professional interest in the subject matter of the representation.

(C) A member shall not, without the informed written consent of each client:

(1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or

(2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or

(3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.

(D) A member who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients without the informed written consent of each client.

(E) A member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of

the representation of the client or former client, the member has obtained confidential information material to the employment.

(F) A member shall not accept compensation for representing a client from one other than the client unless:

(1) There is no interference with the member's independence of professional judgment or with the client-lawyer relationship; and

(2) Information relating to representation of the client is protected as required by Business and Professions Code section 6068, subdivision (e); and

(3) The member obtains the client's informed written consent, provided that no disclosure or consent is required if:

(a) such nondisclosure is otherwise authorized by law; or

(b) the member is rendering legal services on behalf of any public agency which provides legal services to other public agencies or the public.

Discussion:

Rule 3-310 is not intended to prohibit a member from representing parties having antagonistic positions on the same legal question that has arisen in different cases, unless representation of either client would be adversely affected.

Other rules and laws may preclude making adequate disclosure under this rule. If such disclosure is precluded, informed written consent is likewise precluded. (See, e.g., Business and Professions Code section 6068, subdivision (e).)

Paragraph (B) is not intended to apply to the relationship of a member to another party's lawyer. Such relationships are governed by rule 3-320.

Paragraph (B) is not intended to require either the disclosure of the new engagement to a former client or the consent of the former client to the new engagement. However, both disclosure and consent are required if paragraph (E) applies.

While paragraph (B) deals with the issues of adequate disclosure to the present client or clients of the member's present or past relationships to other parties or witnesses or present interest in the subject matter of the representation, paragraph (E) is intended to protect the confidences of another present or former client. These two paragraphs are to apply as complementary provisions.

Paragraph (B) is intended to apply only to a member's own relationships or interests, unless the member knows that a partner or associate in the same firm as the member has or had a relationship with another party or witness or has or had an interest in the subject matter of the representation.

Subparagraphs (C)(1) and (C)(2) are intended to apply to all types of legal employment, including the concurrent representation of multiple parties in litigation or in a single transaction or in some other common enterprise or legal relationship. Examples of the latter include the formation of a partnership for several partners or a corporation for several shareholders, the preparation of an ante-nuptial agreement, or joint or reciprocal wills for a husband and wife, or the resolution of an "uncontested" marital dissolution. In such situations, for the sake of convenience or economy, the parties may well prefer to employ a single counsel, but a member must disclose the potential adverse aspects of such multiple representation (e.g.,

Evid. Code, §962) and must obtain the informed written consent of the clients thereto pursuant to subparagraph (C)(1). Moreover, if the potential adversity should become actual, the member must obtain the further informed written consent of the clients pursuant to subparagraph (C)(2).

Subparagraph (C)(3) is intended to apply to representations of clients in both litigation and transactional matters.

In *State Farm Mutual Automobile Insurance Company v. Federal Insurance Company* (1999) 72 Cal.App. 4th 1422 [86 Cal.Rptr.2d 20], the court held that subparagraph (C)(3) was violated when a member, retained by an insurer to defend one suit, and while that suit was still pending, filed a direct action against the same insurer in an unrelated action without securing the insurer's consent. Notwithstanding State Farm, subparagraph (C)(3) is not intended to apply with respect to the relationship between an insurer and a member when, in each matter, the insurer's interest is only as an indemnity provider and not as a direct party to the action.

There are some matters in which the conflicts are such that written consent may not suffice for non-disciplinary purposes. (See *Woods v. Superior Court* (1983) 149 Cal.App.3d 931 [197 Cal.Rptr. 185]; *Klemm v. Superior Court* (1977) 75 Cal.App.3d 893 [142 Cal.Rptr. 509]; *Ishmael v. Millington* (1966) 241 Cal.App.2d 520 [50 Cal.Rptr. 592].)

Paragraph (D) is not intended to apply to class action settlements subject to court approval.

Paragraph (F) is not intended to abrogate existing relationships between insurers and insureds whereby the insurer has the contractual right to unilaterally select counsel for the insured, where there is no conflict of interest. (See *San Diego Navy Federal Credit Union v. Cumis Insurance Society* (1984) 162 Cal.App.3d 358 [208 Cal.Rptr. 494].) (Amended by order of Supreme Court; operative September 14, 1992; operative March 3, 2003.)

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Rule 3-600. Organization as Client

(A) In representing an organization, a member shall conform his or her representation to the concept that the client is the organization itself, acting through its highest authorized officer, employee, body, or constituent overseeing the particular engagement.

(B) If a member acting on behalf of an organization knows that an actual or apparent agent of the organization acts or intends or refuses to act in a manner that is or may be a violation of law reasonably imputable to the organization, or in a manner which is likely to result in substantial injury to the organization, the member shall not violate his or her duty of protecting all confidential information as provided in Business and Professions Code section 6068, subdivision (e). Subject to Business and Professions Code section 6068, subdivision (e), the member may take such actions as appear to the member to be in the best lawful interest of the organization. Such actions may include among others:

(1) Urging reconsideration of the matter while explaining its likely consequences to the organization; or

(2) Referring the matter to the next higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest internal authority that can act on behalf of the organization.

(C) If, despite the member's actions in accordance with paragraph (B), the highest authority that can act on behalf of the organization insists upon action or a refusal to act that is a violation of law and is likely to result in substantial injury to the organization, the member's response is limited to the member's right, and, where appropriate, duty to resign in accordance with rule 3-700.

(D) In dealing with an organization's directors, officers, employees, members, shareholders, or other constituents, a member shall explain the identity of the client for whom the member acts, whenever it is or becomes apparent that the organization's interests are or may become adverse to those of the constituent(s) with whom the member is dealing. The member shall not mislead such a constituent into believing that the constituent may communicate confidential information to the member in a way that will not be used in the organization's interest if that is or becomes adverse to the constituent.

(E) A member representing an organization may also represent any of its directors, officers, employees, members, shareholders, or other constituents, subject to the provisions of rule 3-310. If the organization's consent to the dual representation is required by rule 3-310, the consent shall be given by an appropriate constituent of the organization other than the individual or constituent who is to be represented, or by the shareholder(s) or organization members.

Discussion:

Rule 3-600 is not intended to enmesh members in the intricacies of the entity and aggregate theories of partnership.

Rule 3-600 is not intended to prohibit members from representing both an organization and other parties connected with it, as for instance (as simply one example) in establishing employee benefit packages for closely held corporations or professional partnerships.

Rule 3-600 is not intended to create or to validate artificial distinctions between entities and their officers, employees, or members, nor is it the purpose of the rule to deny the existence or importance of such formal distinctions. In dealing with a close corporation or small association, members commonly perform professional engagements for both the organization and its major constituents. When a change in control occurs or is threatened, members are faced with complex decisions involving personal and institutional relationships and loyalties and have frequently had difficulty in perceiving their correct duty. (See *People ex rel Deukmejian v. Brown* (1981) 29 Cal.3d 150 [172 Cal.Rptr. 478]; *Goldstein v. Lees* (1975) 46 Cal.App.3d 614 [120 Cal.Rptr. 253]; *Woods v. Superior Court* (1983) 149 Cal.App.3d 931 [197 Cal.Rptr. 185]; *In re Banks* (1978) 283 Ore. 459 [584 P.2d 284]; 1 A.L.R.4th 1105.) In resolving such multiple relationships, members must rely on case law.

ATTACHMENT S
SECTION 40 MEMORANDUM

Memorandum

To: Julie Dubick
From: James Ingram
Re: Modifications to Charter section 40
Date: September 26, 2007

Per request of the Subcommittee chairperson, I investigated the possibility of converting the Subcommittee's recommendation into strikeout and underline format. Initially, that task looked extremely difficult, since my recommended language had attempted to impose order upon the chaotic structure of Charter section 40 by organizing items in a more logical manner. As an alternative, I composed an annotated version of Section 40. This showed both the proposed changes, and where items were being moved in the new language. On September 22, I emailed the Subcommittee members both the revisions which they had requested, as well as the annotated section 40.

In composing the annotated version of section 40, I was struck by the difficulty of determining how much of the Subcommittee's proposal was new Charter language, versus how much is in the present Charter. I realized that the full Committee would not be able to deliberate on a modification of Charter section 40 if it is unclear exactly what those modifications are. Consequently, I returned the original text of that section and placed all of the modifications that the Subcommittee voted to make into its language. This allowed me to give a clear strikeout and underline version of the language proposed for the section.

Of course, I made certain that all of the changes the Subcommittee voted to make are included in the language. Specifically, the Subcommittee voted to create professional qualifications for those elected to the Office of City Attorney, to define the civil client as the municipal corporation of the City of San Diego, to clarify control and settlement of litigation, and to establish a process whereby a City entity may request outside legal counsel if the entity can demonstrate that the City Attorney has an ethical or financial conflict of interest in providing it with legal advice. The retention of any such counsel would continue to be deducted from that entity's budget.

Of course, I still wanted to correct other problems with section 40. I corrected the gender references, for example, and added titles to the subsections to clarify what every part of section 40 regards. That clarity is currently missing from the section. Below I have enclosed my proposed modification to section 40, the language I had previously sent you, and the proposed Municipal Code language.

Staff Proposal for Modification of Section 40

Section 40: City Attorney

(a) Qualifications and Election. The City Attorney must be qualified to practice in all the courts of the state. ~~At the municipal primary and general election in 1977, a City Attorney shall be elected by the people for a term of seven (7) years. A~~ The City Attorney shall ~~thereafter~~ be elected for a term of four (4) years in the manner prescribed by Section 10 of this Charter.

(b) Term Limit. Notwithstanding any other provision of this Charter and commencing with elections held in 1992, no person shall serve more than two (2) consecutive four-year terms as City Attorney. If for any reason a person serves a partial term as City Attorney in excess of two (2) years, that partial term shall be considered a full term for purposes of this term limit provision. Persons holding the office of City Attorney prior to the November 1992 election shall not have prior or current terms be counted for the purpose of applying this term limit provision to future elections.

(c) Chief Legal Adviser. The City Attorney shall be the chief legal adviser of, and attorney for the City and all Departments and offices thereof in matters relating to their official powers and duties, except in the case of the Ethics Commission, which shall have its own legal counsel independent of the City Attorney.

(d) Prohibition on Outside Employment. The attorney and his or her deputies shall devote their full time to the duties of the office and shall not engage in private legal practice during the term for which they are employed by the City, except to carry to a conclusion any matters for which they have been retained prior to taking office.

(e) Employment of Assistants. The City Attorney shall appoint such deputies, assistants, and employees to serve him or her, as may be provided by ordinance of the Council, but all appointments of subordinates other than deputies and assistants shall be subject to the Civil Service provisions of this Charter.

(f) Powers and Duties. It shall be the City Attorney's duty, either personally or by such assistants as he or she may designate, to perform all services incident to the legal department; to give advice in writing when so requested, to the Mayor, the Council, its Committees, the Manager, the Commissions, or Directors of any department, but all such advice shall be in writing with the citation of authorities in support of the conclusions expressed in said written opinions; to prosecute or defend, as the case may be, all suits or cases to which the City may be a party; to prosecute for all offenses against the ordinances of the City and for such offenses against the laws of the State as may be required of the City Attorney by law; to prepare in writing all ordinances, resolutions, contracts, bonds, or other instruments in which the City is concerned, and to endorse on each approval of the form or correctness thereof; to preserve in the City Attorney's office a docket of all cases in which the City is interested in any of the courts and keep a record of all proceedings of said cases; to preserve in the City Attorney's office copies of all written opinions he or she has furnished to the Council, Manager, Commission, or any officer. Such docket, copies and papers shall be the property of the City, and the City Attorney shall, on retiring from office, deliver the same, together with all books, accounts, vouchers, and necessary information, to his or her successor in office.

(g) Legal Documents. The City Attorney shall have charge and custody of all legal papers, books, and dockets belonging to the City pertaining to his or her office, and, upon a receipt therefor, may demand and receive from any officer of the City any book, paper, documents, or evidence necessary to be used in any suit, or required for the purpose of the office.

(h) Control of Litigation.

The civil client of the City Attorney is the municipal corporation, the City of San Diego and the officers through which it acts. The City Attorney shall defend the City

in litigation, as well as its officers and employees as provided by ordinance. The City Attorney may initiate civil litigation on behalf of the City or the People of the State of California, and shall initiate civil litigation on behalf of the City only when requested to do so by the authority having control over the litigation as set forth below. The City Attorney shall manage all litigation of the City, subject to client direction in accordance with this section, and subject to the City Attorney's duty to act in the best interests of the City and to conform to professional and ethical obligations. In the course of litigation, client decisions, including a decision to initiate litigation, shall be made by the Mayor or the Council in accordance with this section. However, the decision to settle litigation shall be made in accordance with subsection (i) of Charter section 40.

(1) **Council.** The Council shall make client decisions in litigation involving matters over which the Charter gives the Council responsibility.

(2) **Mayor.** The Mayor shall make client decisions in litigation involving matters over which the Charter gives the Mayor responsibility.

(3) **Authority to Request the Courts to Restrain or Compel Action by City Officials.** The City Attorney shall apply, upon order of the ~~Council~~client, in the name of the City, to a court of competent jurisdiction for an order or injunction to restrain the misapplication of funds of the City or the abuse of corporate powers, or the execution or performance of any contract made in behalf of the City which may be in contravention of the law or ordinances governing it, or which was procured by fraud or corruption. The City Attorney shall apply, upon order of the ~~Council~~client, to a court of competent jurisdiction for a writ of mandamus to compel the performance of duties of any officer or commission which fails to perform any duty expressly enjoined by law or ordinance.

(4) **Interpretation of Section.** The City Attorney shall have the authority to make the determination regarding who is authorized to make client decisions on behalf of the City in accordance with the principles of this section and accepted principles of representation of municipal entities.

(i) Settlement of Litigation.

(1) **Settlements Involving Only Money Damages.** The Mayor and Council shall establish by ordinance a process for the approval or rejection of settlement involving money damages.

(2) **Other Settlements.** The Council shall have the authority to approve or reject settlement of litigation that does not involve only the payment or receipt of money, subject to veto of the Mayor, and Council override of the Mayor's veto, as provided under this Charter.

(j) Other Duties. The City Attorney shall perform such other duties of a legal nature as the Council may by ordinance require or as are provided by the Constitution and general laws of the State.

(k) Employment of Other Legal Counsel.

(1) The Council shall have authority to employ additional competent technical legal attorneys to investigate or prosecute matters connected with the departments of the City when such assistance or advice is necessary in connection therewith. The Council shall provide sufficient funds in the annual appropriation ordinance for such purposes and shall charge such additional legal service against the appropriation of the respective Departments.

(2) Any elected officer, department head, board or commission may engage counsel other than the City Attorney for legal advice regarding a particular matter where the elected officer, department head, board or commission has reason to believe that the City Attorney may have a prohibited financial conflict of interest under California law

or a prohibited ethical conflict of interest under the California Rules of Professional Conduct with regard to the matter. The Mayor and Council shall provide by ordinance a process for determining whether the retention of outside legal counsel is justified. The cost of said process, and the cost for any of the services of outside legal counsel, shall be charged against the appropriation of the entity requesting such counsel. The Council shall provide sufficient funds in the annual appropriation ordinance for such purposes.

(l) Salary. The salary of the City Attorney shall be fixed by the Council and set forth in the annual appropriation ordinance, provided that the salary of the City Attorney may not be decreased during a term of office, but in no event shall said salary be less than $15,000.00 per year. In the event that another section of this Charter authorizes the Salary Setting Commission to establish salaries for all elected officials, the salary of the City Attorney shall be fixed in the manner prescribed by that section.

(m) Vacancy. In the event of a vacancy occurring in the office of the City Attorney by reason of any cause, the Council shall have authority to fill such vacancy, which said authority shall be exercised within thirty (30) days after the vacancy occurs. Any person appointed to fill such vacancy shall hold office until the next regular municipal election, at which time a person shall be elected to serve the unexpired term. Said appointee shall remain in office until a successor is elected and qualified.

Subcommittee Recommendation

Sec. 40. City Attorney

(a) Qualifications, Election, Compensation and Vacancy.

(1) The City Attorney must be qualified to practice in all the courts of the state. The attorney and his or her deputies shall devote their full time to the duties of the office and shall not engage in private legal practice during the term for which they are employed by the City, except to carry to a conclusion any matters for which they have been retained prior to taking office.

(2) The City Attorney shall be elected for a term of four (4) years in the manner prescribed by section 10 of this Charter. Notwithstanding any other provision of this Charter and commencing with elections held in 1992, no person shall serve more than two (2) consecutive four-year terms as City Attorney. If for any reason a person serves a partial term as City Attorney in excess of two (2) years, that partial term shall be considered a full term for purposes of this term limit provision. Persons holding the office of City Attorney prior to the November 1992 election shall not have prior or current terms be counted for the purpose of applying this term limit provision to future elections.

(3) The salary of the City Attorney shall be fixed by the Council and set forth in the annual appropriation ordinance, provided that the salary of the City Attorney may not be decreased during a term of office, but in no event shall said salary be less than $15,000.00 per year.

(4) In the event of a vacancy occurring in the office of the City Attorney by reason of any cause, the Council shall have authority to fill such vacancy, which said authority shall be exercised within thirty (30) days after the vacancy occurs. Any person appointed to fill such vacancy shall hold office until the next regular municipal election, at which time a person shall be elected to serve the unexpired term. Said appointee shall remain in office until a successor is elected and qualified.

(b) Powers and Duties.

The powers and duties of the City Attorney shall be as follows:

(1) It shall be the City Attorney's duty, either personally or by such assistants as he or she may designate, to perform all services incident to the legal department. The City Attorney shall represent the City in all legal proceedings against the City. The City Attorney shall initiate appropriate legal proceedings on behalf of the City.

(2) The City Attorney shall be the legal advisor to the City, and to all City Boards, Commissions, Committees, Departments, officers and entities. The City Attorney shall give advice or opinion in writing when requested to do so by the Mayor, the Council, its Committees, the Manager, the Commissions, or Directors of any department, but all such advice shall be in writing with the citation of authorities in support of the conclusions expressed in said written opinions.

(3) The City Attorney shall prosecute on behalf of the people all criminal cases and related proceedings arising from violation of the provisions of the Charter and City ordinances, and all misdemeanor offenses arising from violation of the laws of the state occurring in the City.

(4) The City Attorney shall prepare in writing all ordinances, resolutions, contracts, bonds, or other instruments in which the City is concerned, and endorse on each approval of the form or correctness thereof. The City Attorney shall approve in writing the form of all surety or other bonds required by the Charter, or by ordinance, before the bonds are submitted to the proper body, board or officer for final approval, and no such bond shall be approved without approval as to form by the City Attorney. The City Attorney shall approve in writing the form of all contracts before the contracts are entered into by or on behalf of the City.

(5) The City Attorney shall keep records of all actions and proceedings in which the City or any officer or board is an interested party, and copies of all written opinions given by the City Attorney's office. The City Attorney shall comply with all requests for information from the Mayor or Council, and shall report on a regular basis to the Mayor and Council on all matters of litigation, in a form and at times specified by ordinance. In all litigation involving potential financial liability of the City, the City Attorney shall keep the Mayor and Council informed as to the status and progress of litigation.

(6) The City Attorney shall have charge and custody of all legal papers, books, and dockets belonging to the City pertaining to his or her office, and, upon a receipt therefor, may demand and receive from any officer of the City any book, paper, documents, or evidence necessary to be used in any suit, or required for the purpose of the office.

(7) The City Attorney shall perform such other duties of a legal nature as the Council may by ordinance require or as are provided by the Constitution and general laws of the State.

(8) The City Attorney shall preserve in the City Attorney's office a docket of all cases in which the City is interested in any of the courts and keep a record of all proceedings of said cases; to preserve in the City Attorney's office copies of all written opinions he or she has furnished to the Council, Manager, Commission, or any officer. Such docket, copies and papers shall be the property of the City, and the City Attorney shall, on retiring from office, deliver the same, together with all books, accounts, vouchers, and necessary information, to his or her successor in office.

(c) Control of Litigation.

The civil client of the City Attorney is the municipal corporation, the City of San Diego and the officers through which it acts. The City Attorney shall defend the City in litigation, as well as its officers and employees as provided by ordinance. The City Attorney may initiate civil litigation on behalf of the City or the People of the State of California, and shall initiate civil litigation on behalf of the City only when requested to do so by the authority having control over the litigation as set forth below. The City Attorney shall manage all litigation of the City, subject to client direction in

accordance with this section, and subject to the City Attorney's duty to act in the best interests of the City and to conform to professional and ethical obligations. In the course of litigation, client decisions, including a decision to initiate litigation, shall be made by the Mayor or the Council in accordance with this section. However, the decision to settle litigation shall be made in accordance with subsection (d) of Charter section 40.

(1) **Council.** The Council shall make client decisions in litigation involving matters over which the Charter gives the Council responsibility.

(2) **Mayor.** The Mayor shall make client decisions in litigation involving matters over which the Charter gives the Mayor responsibility.

(3) **Authority to Request the Courts to Restrain or Compel Action by City Officials.** The City Attorney shall apply, upon order of the client, in the name of the City, to a court of competent jurisdiction for an order or injunction to restrain the misapplication of funds of the City or the abuse of corporate powers, or the execution or performance of any contract made in behalf of the City which may be in contravention of the law or ordinances governing it, or which was procured by fraud or corruption. The City Attorney shall apply, upon order of the client, to a court of competent jurisdiction for a writ of mandamus to compel the performance of duties of any officer or commission which fails to perform any duty expressly enjoined by law or ordinance.

(4) **Interpretation of Section.** The City Attorney shall have the authority to make the determination regarding who is authorized to make client decisions on behalf of the City in accordance with the principles of this section and accepted principles of representation of municipal entities.

(d) Settlement of Litigation.

(1) **Settlements Involving Only Money Damages.** The Mayor and Council shall establish by ordinance a process for the approval or rejection of settlement involving money damages.

(2) **Other Settlements.** The Council shall have the authority to approve or reject settlement of litigation that does not involve only the payment or receipt of money, subject to veto of the Mayor, and Council override of the Mayor's veto, as provided under this Charter.

(e) Employment of Assistants.

The City Attorney shall appoint such deputies, assistants, and employees to serve him or her, as may be provided by ordinance of the Council, but all appointments of subordinates other than deputies and assistants shall be subject to the Civil Service provisions of this Charter.

(f) Employment of Other Legal Counsel.

(1) The Ethics Commission shall be authorized to employ outside legal counsel, as provided by section 41(d) of this Charter. The City may otherwise contract with outside legal counsel to assist the City Attorney in the discharge of his or her duties under the Charter upon written approval of the Council and the City Attorney, and consistent with budgetary appropriations.

(2) Any elected officer, department head, board or commission may engage counsel other than the City Attorney for legal advice regarding a particular matter where the elected officer, department head, board or commission has reason to believe that the City Attorney may have a prohibited financial conflict of interest under California law or a prohibited ethical conflict of interest under the California Rules of Professional Conduct with regard to the matter. The Mayor and Council shall provide by ordinance a process for determining whether the retention of outside legal counsel is justified. The cost of said process, and the cost for any of the services of outside legal counsel, shall be charged against the appropriation of the

entity requesting such counsel. The Council shall provide sufficient funds in the annual appropriation ordinance for such purposes.

Proposed Municipal Code Language

Employment of Outside Legal Counsel.

(1) The Ethics Commission shall be authorized to employ outside legal counsel, as provided by section 41(d) of the Charter. The City may otherwise contract with outside legal counsel to assist the City Attorney in the discharge of his or her duties under the Charter upon written approval of the Council and the City Attorney, and consistent with budgetary appropriations.

(2) Any elected officer, department head, board or commission may engage counsel other than the City Attorney for legal advice regarding a particular matter where the elected officer, department head, board or commission has reason to believe that the City Attorney may have a prohibited financial conflict of interest under California law or a prohibited ethical conflict of interest under the California Rules of Professional Conduct with regard to the matter, subject to the following limitations and conditions:

(A) The elected officer, department head, board or commission shall first present a written request to the City Attorney for outside counsel. The written request shall specify the particular matter for which the elected officer, department head, board or commission seeks the services of outside counsel, a description of the requested scope of services, and the potential conflict of interest that is the basis for the request. Within five working days after receiving the written request for outside counsel, the City Attorney shall respond in writing to the elected officer, department head, board or commission either consenting or not consenting to the provision of outside counsel. If the City Attorney does not consent to the provision of outside counsel, the City Attorney shall state in the written response why he or she believes that there is no conflict of interest regarding the particular matter.

(B) If the elected officer, department head, board or commission continues to believe there are adequate grounds for outside counsel despite the City Attorney's response that there is no conflict of interest, the elected officer, department head, board or commission may, within thirty days after receiving the City Attorney's response, refer the issue of whether the City Attorney has a prohibited conflict of interest regarding a particular matter to a retired judge or justice of the state courts of California for resolution. If the elected officer, department head, board or commission and City Attorney cannot agree on a retired judge to hear the matter, the retired judge shall be selected at random by an alternative dispute resolution provider. If the matter is referred to a retired judge, the elected officer, department head, board or commission, subject to the budgetary and fiscal provisions of the Charter, shall be entitled to retain outside counsel to represent it solely on the issue of whether the City Attorney has a conflict of interest regarding the particular matter.

(C) In deciding whether the City Attorney has a conflict of interest regarding a particular matter, the retired judge shall be bound by and apply the applicable substantive law and Rules of Professional Conduct as if he or she were a court of law. To the extent practicable, the retired judge shall hear the matter within 15 days after its assignment to the retired judge, and within 15 days after the hearing, shall issue a written opinion stating the basis for the decision. The retired judge, but not the City Attorney or elected officer, department head, board or commission, shall have the power to subpoena witnesses and documents in this proceeding.

(D) The retired judge may request that the City Attorney secure written advice from the California Fair Political Practices Commission, the State Bar of

California, or the California Attorney General on the question of whether the City Attorney has a conflict of interest regarding the particular matter. Upon such a request by the retired judge, the City Attorney shall secure such written advice. The retired judge may consider, but is not bound by, written advice so secured. The decision of the retired judge shall be final for the limited purpose of determining whether or not the elected officer, department head, board or commission may retain outside counsel for the particular matter.

(E) If the retired judge decides that the City Attorney does not have a conflict of interest regarding the particular matter, the City Attorney shall continue to be the legal adviser to the elected officer, department head, board or commission for such matter. If the retired judge decides that the City Attorney has a conflict of interest regarding a particular matter, the elected officer, department head, board or commission shall be entitled to retain outside counsel for legal advice regarding the particular matter, and the City Attorney shall thereupon cease to advise the elected officer, department head, board or commission on such matter. Any such finding of a conflict of interest shall not affect the City Attorney's role as legal advisor to the elected officer, department head, board or commission on all other matters.

(F) If at any time after the retention of outside counsel, the City Attorney believes that there is no longer a conflict of interest, the City Attorney shall state in writing to the elected officer, department head, board or commission why he or she believes that there is no longer a conflict of interest. Within five working days after receiving the written statement from the City Attorney, the elected officer, department head, board or commission shall respond in writing, either agreeing or disagreeing that there is no longer a conflict of interest. If the elected officer, department head, board or commission agrees that there is no longer a conflict of interest regarding a particular matter, the elected officer, department head, board or commission shall cease employing outside counsel for legal advice regarding the matter, and the City Attorney shall serve as legal adviser to the elected officer, department head, board or commission regarding that matter. If the elected officer, department head, board or commission states in its written response that it believes the conflict of interest still exists, the City Attorney may, within ten working days after receiving the response of the elected officer, department head, board or commission, elect to refer the issue of whether the conflict of interest regarding the particular matter continues to exist to the same retired judge who originally heard the matter, if available. The same procedures as established herein shall apply thereafter.

(G) In selecting outside counsel for any purpose described in subsection (f) of Charter section 40, the elected officer, department head, board or commission shall give preference to engaging the services of a City attorney's office, a County counsel's office or other public entity law office with an expertise regarding the subject-matter jurisdiction of the elected officer, department head, board or commission. If the elected officer, department head, board or commission concludes that private counsel is necessary, that attorney must be a member in good standing with the Bar of California who has at least five year's experience in the subject-matter jurisdiction of the elected officer, department head, board or commission. In selecting private counsel, the elected officer, department head, board or commission shall ensure that the attorney retained does not have a conflict of interest that would prevent him or her from providing suitable assistance. The cost of any of the services of outside legal counsel and of the alternative dispute resolution process described in this ordinance shall be charged against the appropriation of the entity requesting such counsel.

ATTACHMENT T
REPORT ON SALARY SETTING

Memorandum

To: Julie Dubick
From: James Ingram
Re: Proposed Language on Salary Setting
Date: August 26, 2007

Per Subcommittee request, the staff has completed a new draft of the proposed Charter language to alter the Charter's salary setting provisions.

Based on the testimony heard before the Subcommittee, and the Salary Setting Commission's most recent report which was reviewed by staff, the Salary Setting Commission appears to be working properly in its establishment of the salaries of the Mayor and Council. The present process, then, has apparently permitted that body the necessary flexibility to consider whatever factors it deems necessary in recommending salaries. Thus, there may be no need to require the body to index City officers' salaries against judges or their counterparts in comparable cities, or to establish an automatic process that arbitrarily uses a single measure, such as inflation, for setting these salaries.

The only problem with the current process is that it requires the Mayor and Council to vote upon their salaries. This has placed elected officers in a difficult position, where they always appear to be acting from narrow self-interest when they vote upon their salaries. Consequently, they do not act to raise their salaries, even when an independent and objective body has indicated that they need to do so. As a result, City officers' salaries are now set at such a level that unless they are able to support themselves from independent means (such as retirement pensions or their own investments), good potential candidates might hesitate to seek office. This does more than injure the short-run financial standing of the individuals elected to City government. It threatens the long-run interests of the City, because San Diego's ability to continue attracting quality candidates to elective offices may depend upon establishing salaries that would allow these candidates to live in the City.

The following language would keep the salary setting process of the City largely at its *status quo*, and continue to enable the voters to exercise their direct democracy right of referendum if they think City officers' salaries should not be increased. Yet the proposed language would take City officers out of the process to some degree, and allow an independent and objective body to decide upon their compensation. The salaries suggested by the Salary Setting Commission in the past might have, if they had been implemented, been reasonable. It is just that the implementation of their good suggestions needs to be streamlined, and freed from the politics of the process as it now stands.

The Subcommittee voted to accept the language proposed by the City Attorney's representatives, subject to changes that would not so hamstring the Civil Service Commission in its selection of the members of the Salary Setting Commission. However, staff has noticed that the language drafted by the City Attorney's representatives does follow the California Constitution's provisions in specifying the factors to be taken into account in setting salaries. Some Subcommittee members had expressed dissatisfaction with inclusion of those factors when staff had placed them in a previous draft. As the staff was unsure as to whether the Subcommittee desires the Charter to determine the factors the Salary Setting Commission is to use in establishing compensation, or to remain silent on such factors, staff has drafted two options for language.

Proposed Charter Amendment Language

Option One—Allow Salary Setting Commission to Decide How to Set Salaries

SECTION 12.1. ~~COUNCILMANIC~~ SALARIES **OF ELECTED OFFICIALS**.
On or before February 15 of every even year, the Salary Setting Commission shall recommend to the **Mayor and** Council the enactment of an ordinance establishing **or modifying** the salary of ~~members of the Council~~**all elected City officials** for the period commencing July 1 of that even year and ending two years thereafter. The Council ~~may~~**shall** adopt th~~e~~**ose** salaries by ordinance ~~as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount~~. **The ordinance adopting the salaries of elected officials shall be separate from the City's Salary Ordinance and shall not be subject to any veto provision of Article XV.** The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election. **Until an ordinance establishing or modifying the salaries of elected City officials takes effect, the officials shall continue to receive the same annual salary received previously. This section shall not be subject to the provisions of section 11.1.**

SECTION 24. MAYOR.
###
~~The rate of pay of the Mayor shall be $12,000.00 per year.~~
###

~~SECTION 24.1. MAYOR'S SALARY.~~
~~On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing the Mayor's salary for the period commencing July 1 of that even year and ending two years thereafter. The Council shall adopt the salary by ordinance, as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election.~~

[SECTION 24.1 REPEALED IN ITS ENTIRETY.]

SECTION 40. CITY ATTORNEY.
###
The salary of the City Attorney shall be fixed **as provided in section 12.1**~~by the Council~~ and set forth in the annual appropriation ordinance, ~~provided~~**except** that the salary of the City Attorney may not be decreased during a term of office, ~~but~~**and** in no event shall said salary be less than $15,000.00 per year.
###

SECTION 41.1. SALARY SETTING COMMISSION.
There is hereby created a Salary Setting Commission consisting of seven members who shall be appointed by the Civil Service Commission for a term of four years. **The Commission shall consist of the following persons: (1) Three public**

members, one of whom has expertise in the area of compensation, such as an economist, market researcher, or personnel manager. No person appointed pursuant to this paragraph may, during the 12 months prior to his or her appointment, have held public office, either elective or appointive, have been a candidate for elective public office, or have been a lobbyist, as defined by the Political Reform Act of 1974. (2) Two members who have experience in the business community. (3) Two members, each of whom is an officer or member of a labor organization. The Civil Service Commission shall strive insofar as is practicable to provide a balanced representation of the geographic, gender, racial, and ethnic diversity of the City in appointing commission members.~~The first members shall be appointed for a term commencing January 1, 1974. Initially, the Commissioners shall be appointed in a manner so that three are appointed for two-year terms and four are appointed for four-year terms.~~ The Salary Setting Commission shall recommend to the Council the establishment and modification~~enactment~~ of ~~an ordinance establishing~~salaries for **all elected officials** ~~the Mayor and~~ **Council** as provided **in section 12.1 of**~~by~~ this Charter. The **City Manager shall provide from existing resources the staff and services** ~~Council shall provide the funds~~ necessary to enable the Commission to perform its duties. ~~The Civil Service Commission in its appointments shall take into consideration sex, race and geographical area so that the membership of such Commission shall reflect the entire community.~~

Option Two—Provide Expressly for Factors to Be Used by Salary Setting Commission in Establishing Compensation

[All of the above language listed in Option One is included, in addition to the following language at the end of Section 41.1:]

The Commission shall consider in establishing or modifying the annual salary for elected officials the following factors, including but not limited to:
(1) The elected official's responsibility and scope of authority, and the amount of time directly or indirectly related to the performance of the duties, functions, and services of the office.
(2) The annual salary of other elected and appointed municipal officials with comparable responsibility in this and other states.
(3) The benefits package accompanying the City office.
(4) Comparable data including the Consumer Price index and rates of inflation.
(5) The relative cost of living in the City and the establishment of salaries adequate to attract sufficiently qualified candidates.

Staff Analysis

Either of the options would allow San Diego to achieve what Los Angeles, San Francisco and even the State of California have already done by establishing a reasonable process to establish the compensation of their officers. Those governments have realized that requiring elected officials to set their own salaries places them in a position with an intractable conflict of interest. Even when they make the public happy by reducing their salaries, they have to sacrifice the public's long-term interests by setting up a situation in which elective offices may not attract candidates that are appropriately representative. After all, not many ordinary citizens have the means to live without a decent salary. If salaries are set

exceedingly low, few persons that are representative of the City and their districts will be able to consider running for office. Moreover, if candidates seek public office even when it is significantly under-compensated, one has to consider the ethical issues. What other motives beside salary might impel one to seek public office, when the salary attached would not allow one to support oneself and one's family?

Current Charter Sections Prior to Proposed Alteration

"SECTION 12.1. COUNCILMANIC SALARIES.
On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing the salary of members of the Council for the period commencing July 1 of that even year and ending two years thereafter. The Council may adopt the salaries by ordinance as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election.
(Addition voted 11-06-73; effective 12-07-73.)"

"SECTION 24. MAYOR.
###
The rate of pay of the Mayor shall be $12,000.00 per year.
###"

"SECTION 40. CITY ATTORNEY.
###
The salary of the City Attorney shall be fixed by the Council and set forth in the annual appropriation ordinance, provided that the salary of the City Attorney may not be decreased during a term of office, but in no event shall said salary be less than $15,000.00 per year."

"SECTION 41.1. SALARY SETTING COMMISSION.
There is hereby created a Salary Setting Commission consisting of seven members who shall be appointed by the Civil Service Commission for a term of four years. The first members shall be appointed for a term commencing January 1, 1974. Initially, the Commissioners shall be appointed in a manner so that three are appointed for two-year terms and four are appointed for four-year terms. The Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing salaries for the Mayor and Council as provided by this Charter. The Council shall provide the funds necessary to enable the Commission to perform its duties. The Civil Service Commission in its appointments shall take into consideration sex, race and geographical area so that the membership of such Commission shall reflect the entire community.
(Addition voted 11-06-73; effective 12-07-73.)"

Other San Diego Charter Sections That Are Relevant to this Language

"SECTION 11.1. LEGISLATIVE POWER -- NONDELEGABLE.

The same prohibition against delegation of the legislative power which is imposed on the State Legislature by Article XI, Section 11a of the Constitution of the State of California shall apply to the City Council of The City of San Diego, so that its

members shall not delegate legislative power or responsibility which they were elected to exercise in the adoption of any ordinance or resolution which raises or spends public monies, including but not limited to the City's annual budget ordinance or any part thereof, and the annual ordinance setting compensation for City employees, or any ordinance or resolution setting public policy.

The City Council shall annually adopt an ordinance establishing salaries for all City employees. The City Council shall adopt this ordinance not later than May 30 of each year after considering all relevant evidence including but not limited to the needs of the citizens of the City of San Diego for municipal services, the ability of the citizens to pay for those services, local economic conditions and other relevant factors as the Council deems appropriate. The City Council shall give priority in the funding of municipal services to the need of the citizens for police protection in considering adoption of this salary ordinance and the annual budget ordinance.

The prohibition imposed by this section against unlawful delegation of the legislative responsibility to set compensation for city employees shall extend to any scheme or formula which seeks to fix the compensation of City of San Diego employees at the level of compensation paid to employees of any other public agency whose governing board is not elected by and not accountable to the people of the City of San Diego. This prohibition shall also extend to any scheme or formula which seeks to fix, establish, or adjust the compensation of City of San Diego employees at the level of the largest cities in California or the State of California.

(Addition voted 06-03-80; effective 07-16-80)
(Amendment voted 11-04-80; effective 12-31-80.)
(Amendment voted 06-03-86; effective 09-08-86.)"

Salary Setting Provisions of California Constitution, Article 3

SECTION. 8. (a) The California Citizens Compensation Commission is hereby created and shall consist of seven members appointed by the Governor. The commission shall establish the annual salary and the medical, dental, insurance, and other similar benefits of state officers.
(b) The commission shall consist of the following persons:
(1) Three public members, one of whom has expertise in the area of compensation, such as an economist, market researcher, or personnel manager; one of whom is a member of a nonprofit public interest organization; and one of whom is representative of the general population and may include, among others, a retiree, homemaker, or person of median income. No person appointed pursuant to this paragraph may, during the 12 months prior to his or her appointment, have held public office, either elective or appointive, have been a candidate for elective public office, or have been a lobbyist, as defined by the Political Reform Act of 1974.
(2) Two members who have experience in the business community, one of whom is an executive of a corporation incorporated in this State which ranks among the largest private sector employers in the State based on the number of employees employed by the corporation in this State and one of whom is an owner of a small business in this State.
(3) Two members, each of whom is an officer or member of a labor organization.
(c) The Governor shall strive insofar as practicable to provide a balanced representation of the geographic, gender, racial, and ethnic diversity of the State in appointing commission members.

(d) The Governor shall appoint commission members and designate a chairperson for the commission not later than 30 days after the effective date of this section. The terms of two of the initial appointees shall expire on December 31, 1992, two on December 31, 1994, and three on December 31, 1996, as determined by the Governor. Thereafter, the term of each member shall be six years. Within 15 days of any vacancy, the Governor shall appoint a person to serve the unexpired portion of the term.

(e) No current or former officer or employee of this State is eligible for appointment to the commission.

(f) Public notice shall be given of all meetings of the commission, and the meetings shall be open to the public.

(g) On or before December 3, 1990, the commission shall, by a single resolution adopted by a majority of the membership of the commission, establish the annual salary and the medical, dental, insurance, and other similar benefits of state officers. The annual salary and benefits specified in that resolution shall be effective on and after December 3, 1990.

Thereafter, at or before the end of each fiscal year, the commission shall, by a single resolution adopted by a majority of the membership of the commission, adjust the annual salary and the medical, dental, insurance, and other similar benefits of state officers. The annual salary and benefits specified in the resolution shall be effective on and after the first Monday of the next December.

(h) In establishing or adjusting the annual salary and the medical, dental, insurance, and other similar benefits, the commission shall consider all of the following:

(1) The amount of time directly or indirectly related to the performance of the duties, functions, and services of a state officer.

(2) The amount of the annual salary and the medical, dental, insurance, and other similar benefits for other elected and appointed officers and officials in this State with comparable responsibilities, the judiciary, and, to the extent practicable, the private sector, recognizing, however, that state officers do not receive, and do not expect to receive, compensation at the same levels as individuals in the private sector with comparable experience and responsibilities.

(3) The responsibility and scope of authority of the entity in which the state officer serves.

(i) Until a resolution establishing or adjusting the annual salary and the medical, dental, insurance, and other similar benefits for state officers takes effect, each state officer shall continue to receive the same annual salary and the medical, dental, insurance, and other similar benefits received previously.

(j) All commission members shall receive their actual and necessary expenses, including travel expenses, incurred in the performance of their duties. Each member shall be compensated at the same rate as members, other than the chairperson, of the Fair Political Practices Commission, or its successor, for each day engaged in official duties, not to exceed 45 days per year.

(k) It is the intent of the Legislature that the creation of the commission should not generate new state costs for staff and services. The Department of Personnel Administration, the Board of Administration of the Public Employees' Retirement System, or other appropriate agencies, or their successors, shall furnish, from existing resources, staff and services to the commission as needed for the performance of its duties.

(l) "State officer," as used in this section, means the Governor, Lieutenant Governor, Attorney General, Controller, Insurance Commissioner, Secretary of State, Superintendent of Public Instruction, Treasurer, member of the State Board of Equalization, and Member of the Legislature."

San Francisco's Charter Sections

"SEC. 2.100. COMPOSITION AND SALARY.
The Board of Supervisors shall consist of eleven members elected by district.

The office of Board of Supervisors member is a full time position. The Civil Service Commission shall set the Supervisors' salary once every five years. Before the Commission determines the Supervisors' salary, it shall conduct and consider a salary survey of other full time California City Councils and County Boards of Supervisors and it may consider the Consumer Price Index (CPI).

The Civil Service Commission shall timely transmit its determination of the Supervisors' salary to the Controller, so that funds can be set aside for that purpose. The Controller shall include the Civil Service Commission's determination in appropriate budget documents to insure implementation. This determination may not be changed except by the Civil Service Commission.

The Civil Service Commission shall establish dates for an appropriate five-year cycle for making the determinations required by this Section, in order to efficiently coordinate with City budget processes and related procedures. In order to institute this five-year cycle the initial determination may be for less than a five-year period, as determined by the Civil Service Commission.

If the City and employee organizations agree to amend the compensation provisions of existing memoranda of understanding to reduce costs, the Civil Service Commission shall review and amend the Supervisors' salary as necessary to achieve comparable cost savings in the affected fiscal year or years.

The provisions of this Section shall apply, notwithstanding any other provision of this Charter.
(Amended November 1996; June 1998; November 2002)"

Los Angeles Charter Sections

"**Sec. 218. Compensation of Elected Officers and Limitation on Outside Activities.**

(a) **Compensation.** The Mayor, City Attorney, Controller and members of the Council shall receive compensation for their services only as provided in this section and shall not receive any other compensation for those services.

(1) *Salaries.* Members of the City Council shall be paid a salary equal to that prescribed by law for judges of the Municipal Court of the Los Angeles Judicial District or its successor in the event that court is dissolved or reconstituted.

The Controller shall be paid a salary that is 10% more than that of a Council member. The City Attorney shall be paid a salary that is 20% more than that of a Council member. The Mayor shall be paid a salary that is 30% more than that of a Council member.

The Controller shall be responsible for ascertaining the salary of Municipal Court judges and for setting and adjusting the salaries of elected officers in accordance with this section. Salaries shall be paid in bi-weekly increments unless the Council, by ordinance, prescribes otherwise.

(2) *Other Benefits.* The Council may, by ordinance, subject to referendum as specified in Article IV of the Charter, confer benefits other than salary upon elected officers as additional compensation for their services. However, benefits from the Los Angeles City Employees Retirement System may not be provided for elected officers that would exceed benefits generally provided to members of the System who are non-represented officers or employees of the City or, if there are no non-represented officers or employees, that would exceed benefits generally provided to other members of the System.

(3) *Operative Date of Changes in Salaries.* The salaries of elected officers shall be adjusted in the manner provided in this section upon the effective date of any change in the salaries of Municipal Court judges.

(b) **Restrictions on Outside Activities.** The Mayor, City Attorney, Controller, and members of the Council shall devote their entire time to duties related to their offices. They shall not receive any compensation, including honoraria, for their services other than that provided in this section, except that which may be provided for their serving on governmental entities where payment is authorized for other governmental officers or employees serving in that capacity."

ATTACHMENT U
INITIAL MEMORANDUM ON SALARY SETTING

Memorandum

To: Julie Dubick
From: James Ingram
Re: Proposed Language on Salary Setting
Date: July 25, 2007

Per Subcommittee request, the staff has drafted straw language to alter the Charter's salary setting provisions. Both of the options below would provide for salary setting by a commission whose recommendations would not require Council action in order to take effect. The staff also has provided the Los Angeles model, in which City officer salaries are set with respect to California Municipal Court judges, as a possible option.

Proposed Language

OPTION 1—CALIFORNIA STATE MODEL

SEC. ___. (a) Notwithstanding Charter sections 12.1, 24, 40 and 41.1, the salaries of all City officers shall be established by the San Diego Citizens Compensation Commission. The commission is hereby created and shall consist of seven members appointed by the Mayor and confirmed by the City Council to serve terms of four years. The first members shall be appointed for a term commencing upon adoption of this Charter section. Initially, the Commissioners shall be appointed in a manner so that three are appointed for two-year terms and four are appointed for four-year terms. The commission shall establish the annual salary of City officers.

(b) The commission shall consist of the following persons:

(1) Three public members, one of whom has expertise in the area of compensation, such as an economist, market researcher, or personnel manager; one of whom is a member of a nonprofit public interest organization; and one of whom is representative of the general population and may include, among others, a retiree, homemaker, or person of median income. No person appointed pursuant to this paragraph may, during the 12 months prior to his or her appointment, have held public office, either elective or appointive, have been a candidate for elective public office, or have been a lobbyist, as defined by the Political Reform Act of 1974.

(2) Two members who have experience in the business community, one of whom is an executive of a corporation incorporated in this State which ranks among the largest private sector employers in the City based on the number of employees employed by the corporation in this City and one of whom is an owner of a small business in this City.

(3) Two members, each of whom is an officer or member of a labor organization.

(c) The Mayor shall strive insofar as practicable to provide a balanced representation of the geographic, gender, racial, and ethnic diversity of the City in appointing commission members.

(d) The Mayor and Council shall select commission members as provided above and designate a chairperson for the commission not later than 90 days after the effective date of this section. Within 90 days of any vacancy, the Mayor and Council shall select a person to serve the unexpired portion of the term.

(e) No current or former officer or employee of this City is eligible for appointment to the commission.

(f) Public notice shall be given of all meetings of the commission, and the meetings shall be open to the public.

(g) On or before December 1, 2010, the commission shall, by a single resolution adopted by a majority of the membership of the commission, establish the annual

salary of City officers. The annual salary specified in that resolution shall be effective on and after December 1, 2010.

Thereafter, at or before the end of each fiscal year, the commission shall, by a single resolution adopted by a majority of the membership of the commission, adjust the annual salary of City officers. The annual salary specified in the resolution shall be effective on and after the first Monday of the next December.

(h) In establishing or adjusting the annual salary, the commission shall consider all of the following:

(1) The amount of time directly or indirectly related to the performance of the duties, functions, and services of a City officer.

(2) The amount of the annual salary for other elected and appointed officers and officials in this State with comparable responsibilities, the judiciary, and, to the extent practicable, the private sector, recognizing, however, that City officers do not receive, and do not expect to receive, compensation at the same levels as individuals in the private sector with comparable experience and responsibilities.

(3) The responsibility and scope of authority of the entity in which the City officer serves.

(i) Until a resolution establishing or adjusting the annual salary for City officers takes effect, each City officer shall continue to receive the same annual salary received previously.

(j) The creation of the commission should not generate new costs for staff and services. The City shall furnish, from existing resources, staff and services to the commission as needed for the performance of its duties.

(k) "City officer," as used in this section, means the Mayor, City Attorney and Member of the City Council.

OPTION 2—SAN FRANCISCO MODEL

SEC. ___. a) The Civil Service Commission shall set the salaries of City officers once every five years. For the purposes of this section, “City officers” shall be considered to consist exclusively of the Mayor, City Attorney and members of the City Council. Before the Commission determines these salaries, it shall conduct and consider a salary survey of other full time California Mayors, City Attorneys and City Councils and it may consider the Consumer Price Index (CPI).

b) The Civil Service Commission shall timely transmit its determination of the salaries of City officers to the Chief Financial Officer, so that funds can be set aside for that purpose. The Chief Financial Officer shall include the Civil Service Commission's determination in appropriate budget documents to insure implementation. This determination may not be changed except by the Civil Service Commission.

c) The Civil Service Commission shall establish dates for an appropriate five-year cycle for making the determinations required by this Section, in order to efficiently coordinate with City budget processes and related procedures. In order to institute this five-year cycle the initial determination may be for less than a five-year period, as determined by the Civil Service Commission.

d) If the City and employee organizations agree to amend the compensation provisions of existing memoranda of understanding to reduce costs, the Civil Service Commission shall review and amend the salaries of City officers as necessary to achieve comparable cost savings in the affected fiscal year or years.

e) The provisions of this Section shall apply, notwithstanding any other provision of this Charter.

Staff Analysis

Option 1 combines the State of California's provisions for salary setting with part of the current City Charter provisions for salary setting (See California Constitution, Article 3, Section 8; S.D. Charter Section 41.1).

Option 2 uses San Francisco as a model, authorizing the Civil Service Commission to alter the salaries of City officers.

If either Option 1 or 2 were adopted, current Charter section 11.1 would also need to be altered, as either proposed new section would delegate salary setting authority to a commission. Additionally, this Charter change would require alteration of Charter section 12.1, as well as the relevant provisions of Sections 24 and 40 covering the salaries of the Mayor and City Attorney.

A third option would be to follow the Los Angeles model, which sets the salaries of City Council members at the level provided for the Municipal Court judges for that City, and then provides that a larger amount will be paid to other officers elected by the city. It may be that this third option would also require amending Charter section 11.1, as it in effect delegates salary setting authority to the State Legislature. (The Los Angeles provisions appear at the end of this report.)

Relevant Sections of San Diego's Present Charter

"SECTION 11.1. LEGISLATIVE POWER -- NONDELEGABLE**.**
The same prohibition against delegation of the legislative power which is imposed on the State Legislature by Article XI, Section 11a of the Constitution of the State of California shall apply to the City Council of The City of San Diego, so that its members shall not delegate legislative power or responsibility which they were elected to exercise in the adoption of any ordinance or resolution which raises or spends public monies, including but not limited to the City's annual budget ordinance or any part thereof, and the annual ordinance setting compensation for City employees, or any ordinance or resolution setting public policy.

The City Council shall annually adopt an ordinance establishing salaries for all City employees. The City Council shall adopt this ordinance not later than May 30 of each year after considering all relevant evidence including but not limited to the needs of the citizens of the City of San Diego for municipal services, the ability of the citizens to pay for those services, local economic conditions and other relevant factors as the Council deems appropriate. The City Council shall give priority in the funding of municipal services to the need of the citizens for police protection in considering adoption of this salary ordinance and the annual budget ordinance.

The prohibition imposed by this section against unlawful delegation of the legislative responsibility to set compensation for city employees shall extend to any scheme or formula which seeks to fix the compensation of City of San Diego employees at the level of compensation paid to employees of any other public agency whose governing board is not elected by and not accountable to the people of the City of San Diego. This prohibition shall also extend to any scheme or formula which seeks to fix,

establish, or adjust the compensation of City of San Diego employees at the level of the largest cities in California or the State of California.
(Addition voted 06-03-80; effective 07-16-80)
(Amendment voted 11-04-80; effective 12-31-80.)
(Amendment voted 06-03-86; effective 09-08-86.)"

"SECTION 12.1. COUNCILMANIC SALARIES.
On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing the salary of members of the Council for the period commencing July 1 of that even year and ending two years thereafter. The Council may adopt the salaries by ordinance as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election.
(Addition voted 11-06-73; effective 12-07-73.)"

"SECTION 24. MAYOR.
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The rate of pay of the Mayor shall be $12,000.00 per year."

"SECTION 40. CITY ATTORNEY.
###
The salary of the City Attorney shall be fixed by the Council and set forth in the annual appropriation ordinance, provided that the salary of the City Attorney may not be decreased during a term of office, but in no event shall said salary be less than $15,000.00 per year."

"SECTION 41.1. SALARY SETTING COMMISSION.
There is hereby created a Salary Setting Commission consisting of seven members who shall be appointed by the Civil Service Commission for a term of four years. The first members shall be appointed for a term commencing January 1, 1974. Initially, the Commissioners shall be appointed in a manner so that three are appointed for two-year terms and four are appointed for four-year terms. The Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing salaries for the Mayor and Council as provided by this Charter. The Council shall provide the funds necessary to enable the Commission to perform its duties. The Civil Service Commission in its appointments shall take into consideration sex, race and geographical area so that the membership of such Commission shall reflect the entire community.
(Addition voted 11-06-73; effective 12-07-73.)"

California's Provisions for Salary Setting

CALIFORNIA CONSTITUTION
ARTICLE 3 STATE OF CALIFORNIA

SEC. 8. (a) The California Citizens Compensation Commission is hereby created and shall consist of seven members appointed by the Governor. The commission shall establish the annual salary and the medical, dental, insurance, and other similar benefits of state officers.

(b) The commission shall consist of the following persons:

(1) Three public members, one of whom has expertise in the area of compensation, such as an economist, market researcher, or personnel manager; one of whom is a member of a nonprofit public interest organization; and one of whom is representative of the general population and may include, among others, a retiree, homemaker, or person of median income. No person appointed pursuant to this paragraph may, during the 12 months prior to his or her appointment, have held public office, either elective or appointive, have been a candidate for elective public office, or have been a lobbyist, as defined by the Political Reform Act of 1974.

(2) Two members who have experience in the business community, one of whom is an executive of a corporation incorporated in this State which ranks among the largest private sector employers in the State based on the number of employees employed by the corporation in this State and one of whom is an owner of a small business in this State.

(3) Two members, each of whom is an officer or member of a labor organization.

(c) The Governor shall strive insofar as practicable to provide a balanced representation of the geographic, gender, racial, and ethnic diversity of the State in appointing commission members.

(d) The Governor shall appoint commission members and designate a chairperson for the commission not later than 30 days after the effective date of this section. The terms of two of the initial appointees shall expire on December 31, 1992, two on December 31, 1994, and three on December 31, 1996, as determined by the Governor. Thereafter, the term of each member shall be six years. Within 15 days of any vacancy, the Governor shall appoint a person to serve the unexpired portion of the term.

(e) No current or former officer or employee of this State is eligible for appointment to the commission.

(f) Public notice shall be given of all meetings of the commission, and the meetings shall be open to the public.

(g) On or before December 3, 1990, the commission shall, by a single resolution adopted by a majority of the membership of the commission, establish the annual salary and the medical, dental, insurance, and other similar benefits of state officers. The annual salary and benefits specified in that resolution shall be effective on and after December 3, 1990.

Thereafter, at or before the end of each fiscal year, the commission shall, by a single resolution adopted by a majority of the membership of the commission, adjust the annual salary and the medical, dental, insurance, and other similar benefits of state officers. The annual salary and benefits specified in the resolution shall be effective on and after the first Monday of the next December.

(h) In establishing or adjusting the annual salary and the medical, dental, insurance, and other similar benefits, the commission shall consider all of the following:

(1) The amount of time directly or indirectly related to the performance of the duties, functions, and services of a state officer.

(2) The amount of the annual salary and the medical, dental, insurance, and other similar benefits for other elected and appointed officers and officials in this State with comparable responsibilities, the judiciary, and, to the extent practicable, the private sector, recognizing, however, that state officers do not receive, and do not expect to receive, compensation at the same levels as individuals in the private sector with comparable experience and responsibilities.

(3) The responsibility and scope of authority of the entity in which the state officer serves.

(i) Until a resolution establishing or adjusting the annual salary and the medical, dental, insurance, and other similar benefits for state officers takes effect, each state officer shall continue to receive the same annual salary and the medical, dental, insurance, and other similar benefits received previously.

(j) All commission members shall receive their actual and necessary expenses, including travel expenses, incurred in the performance of their duties. Each member shall be compensated at the same rate as members, other than the chairperson, of the Fair Political Practices Commission, or its successor, for each day engaged in official duties, not to exceed 45 days per year.

(k) It is the intent of the Legislature that the creation of the commission should not generate new state costs for staff and services. The Department of Personnel Administration, the Board of Administration of the Public Employees' Retirement System, or other appropriate agencies, or their successors, shall furnish, from existing resources, staff and services to the commission as needed for the performance of its duties.

(l) "State officer," as used in this section, means the Governor, Lieutenant Governor, Attorney General, Controller, Insurance Commissioner, Secretary of State, Superintendent of Public Instruction, Treasurer, member of the State Board of Equalization, and Member of the Legislature."

San Francisco's Charter Sections

"SEC. 2.100. COMPOSITION AND SALARY.
The Board of Supervisors shall consist of eleven members elected by district.

The office of Board of Supervisors member is a full time position. The Civil Service Commission shall set the Supervisors' salary once every five years. Before the Commission determines the Supervisors' salary, it shall conduct and consider a salary survey of other full time California City Councils and County Boards of Supervisors and it may consider the Consumer Price Index (CPI).

The Civil Service Commission shall timely transmit its determination of the Supervisors' salary to the Controller, so that funds can be set aside for that purpose. The Controller shall include the Civil Service Commission's determination in appropriate budget documents to insure implementation. This determination may not be changed except by the Civil Service Commission.

The Civil Service Commission shall establish dates for an appropriate five-year cycle for making the determinations required by this Section, in order to efficiently coordinate with City budget processes and related procedures. In order to institute this five-year cycle the initial determination may be for less than a five-year period, as determined by the Civil Service Commission.

If the City and employee organizations agree to amend the compensation provisions of existing memoranda of understanding to reduce costs, the Civil Service Commission shall review and amend the Supervisors' salary as necessary to achieve comparable cost savings in the affected fiscal year or years.

The provisions of this Section shall apply, notwithstanding any other provision of this Charter.
(Amended November 1996; June 1998; November 2002)"

Los Angeles Charter Sections

"**Sec. 218. Compensation of Elected Officers and Limitation on Outside Activities.**

(a) **Compensation.** The Mayor, City Attorney, Controller and members of the Council shall receive compensation for their services only as provided in this section and shall not receive any other compensation for those services.

(1) *Salaries.* Members of the City Council shall be paid a salary equal to that prescribed by law for judges of the Municipal Court of the Los Angeles Judicial District or its successor in the event that court is dissolved or reconstituted.

The Controller shall be paid a salary that is 10% more than that of a Council member. The City Attorney shall be paid a salary that is 20% more than that of a Council member. The Mayor shall be paid a salary that is 30% more than that of a Council member.

The Controller shall be responsible for ascertaining the salary of Municipal Court judges and for setting and adjusting the salaries of elected officers in accordance with this section. Salaries shall be paid in bi-weekly increments unless the Council, by ordinance, prescribes otherwise.

(2) *Other Benefits.* The Council may, by ordinance, subject to referendum as specified in Article IV of the Charter, confer benefits other than salary upon elected officers as additional compensation for their services. However, benefits from the Los Angeles City Employees Retirement System may not be provided for elected officers that would exceed benefits generally provided to members of the System who are non-represented officers or employees of the City or, if there are no non-represented officers or employees, that would exceed benefits generally provided to other members of the System.

(3) *Operative Date of Changes in Salaries.* The salaries of elected officers shall be adjusted in the manner provided in this section upon the effective date of any change in the salaries of Municipal Court judges.

(b) **Restrictions on Outside Activities.** The Mayor, City Attorney, Controller, and members of the Council shall devote their entire time to duties related to their offices. They shall not receive any compensation, including honoraria, for their services other than that provided in this section, except that which may be provided for their serving on governmental entities where payment is authorized for other governmental officers or employees serving in that capacity."

ATTACHMENT V
REPORT ON APPOINTMENTS

Subcommittee on Duties of Elected Officials
Staff Report on Appointment Powers by James W. Ingram III

This report is intended to explain the various agencies whose appointment has been rendered ambiguous at best, or inconsistent at worst, with the City of San Diego's transition to a Strong Mayor form of government. The Subcommittee on Duties of Elected Officials has the ability to recommend a more consistent and elegant form of government, under which there is clear separation between executive and legislative responsibilities. The classic version is, of course, the United States Constitution, under which all officers of government are placed in the executive branch, unless they are clearly legislative (Speaker of the House) or judicial (Supreme Court and other inferior courts). Furthermore, the United States Constitution grants the president all appointment authority, subject in some cases to Congressional confirmation, except for Congress's own officers. Presently, this clarity of executive-legislative separation is absent from San Diego's City Charter. Part of this inelegance is due to outside organizations to which San Diego appoints members or liaisons.

Board of Port Commissioners

One of these is the Board of Port Commissioners. This board governs the Port of San Diego, managing the San Diego Harbor and administering the public lands along San Diego Bay. The State of California's Port Act specifically accords appointment authority to the city councils of the member cities (Section 16, San Diego Unified Port District Act). Thus, the seven members of the Board of Port Commissioners are chosen by the San Diego City Council (3 members), as well as the councils of Chula Vista, Coronado, Imperial Beach and National City (1 member each). The awarding of the appointing authority to San Diego's City Council was not a problem when the Mayor was a member of the Council, but does not make sense under a Strong Mayor system of governance.

San Diego County Regional Airport Authority

The San Diego County Regional Airport Authority manages the day-to-day operations of San Diego International Airport, addresses the region's long-term air transportation needs, and serves as the region's Airport Land Use Commission. The San Diego County Regional Airport Authority is governed by a nine-member Board, with three paid members serving as the Executive Committee. The Executive Committee is appointed by the Mayor of the City of San Diego, the Governor of the State of California and the Sheriff of San Diego County. All three of these appointees require confirmation. The Mayoral appointee is confirmed by the City Council, the gubernatorial appointee by the California Senate and the Sheriff's appointee by San Diego's County Board of Supervisors.

San Diego appoints two more members of the board to unpaid positions that are not part of the Executive Committee. (The other 4 unpaid members are appointed by the Mayor of Chula Vista, the mayors of north inland cities, the mayors of north coastal cities, and the mayors of East San Diego County.)

The process for the appointment of the City of San Diego's two unpaid members of the Airport Authority is detailed in Section 170016 of the state Public Utilities Code: "170016. (a) The permanent board shall be established pursuant to this section. The board shall consist of nine members, as follows:

(1) The Mayor of the City of San Diego, or a member of the city council designated by the mayor to be his or her alternate.

(2) A member of the public appointed by the Mayor of the City of San Diego. The initial term for this member shall be two years." (California Public Utilities Code)

The fact that state law indicates that someone is "designated by the mayor to be his or her alternate" seems to be very clear. Despite the clarity of this law, the ordinance by which the City authorized San Diego City Councilmember Tony Young's appointment indicated that he was selected through a unique process that the Mayor and Council President had to put together due to the anomalous result of Prop F for City representatives who are members of outside governmental organizations.

R-2006-629; Resolution Number R-301165, January 23, 2006 was the City Ordinance that appointed Council member Young to the Airport Authority and his other assignments to represent the City. This ordinance included language that appeared in several City ordinances appointing City representatives. The language stated that due to the implementation of Article XV implementing the Mayor-Council form of government, this appointment represented a necessary compromise. There was some ambiguity as to the appropriate appointment process, and "a review of the various boards, commissions, committees and governmental agencies to which the City appoints representatives is ongoing, and confirms that some appointments of City representatives (members of the City Council or Mayor) may be accomplished by the Mayor alone, some may be by the Mayor and Council acting jointly, and some may be accomplished by the City Council acting alone".

Given the situation created by the removal of the Mayor from the Council, there was some ambiguity as to what process was to be used to fill these positions. The Mayor and Council President agreed to jointly suggest which elected officials should serve as City representatives to these agencies.

Possible Anomalies

All of the following bodies have had members appointed under the same language as the ordinance that provided for appointing Tony Young to the Airport Authority and his other City assignments:

Liaisons to the

Port Commission
Southeastern Economic Development Corporation

Representatives and Alternates for the

Abandoned Vehicle Abatement Service Authority
City-County Joint Homeless Taskforce
City-County Reinvestment Taskforce
Local Agency Formation Commission
League of California Cities-San Diego County Division & Board of Directors
Los Peñasquitos Canyon Preserve Taskforce
Mission Trails Regional Park Taskforce
Otay River Valley Regional Park Policy Committee
SANDAG
    Board of Directors
    Executive Committee
    Borders Committee
    Energy Working Group
    Public Safety Committee
    Regional Housing Working Group
    Regional Planning Committee
    Transportation Committee
    Bayshore Bikeway Working Group
    Shoreline Preservation Working Group
San Diego Metropolitan Transit System
    Board
    Executive Committee
    Taxi Cab Committee
San Diego River Conservancy
San Diego Workforce Partnership
San Dieguito River Valley Regional Open Space Joint Powers Authority
Service Authority for Freeway Emergencies

Other Problems

The anomalies listed above are not the only examples of a hodge-podge post-Prop F appointment process. There are many other potential anomalies arising from San Diego's transition from Council-Manager to Strong Mayor (Mayor-Council) city:

CCDC Board of Directors
Historical Resources Board Members
San Diego County Water Authority Board of Directors
San Diego Housing Commission
San Diego Regional Agency Board Members
San Diego Convention Center Corporation Directors
Tobacco Settlement Revenue Funding Corporation Directors

The vintage-1984 Council Policy 000-13 used to address this issue, but does not do so properly due to Prop F.

The above compendium does not include some other bodies which are set forth in the City Attorney's opinion of February 28, 2006, nor the attached table setting out the terms of the appointment of these bodies in a table.

Since the Mayor held a role in the appointment process for all of these agencies before Prop F, the Mayor should have a role in it after Prop F. One way to do this would be to adopt the procedure that Council Policy 000-13 recommended for those appointments by both Mayor and Council. The Council could offer suggestions for nominees, the Mayor would nominate appointees, and the Council would exercise confirmation over appointees.

When the Mayor was a member of the Council and voted with that body, then the Mayor played a part in the appointment of all of these City representatives. It would be an irony and problematic for the City if the strong mayor system removed the Mayor's role in selecting City representatives for these important agencies. The Mayor is the only policy making official elected by a City-wide vote.

City Attorney's Opinion

The City Attorney's February 28, 2006 opinion suggested that for many of these organizations where the Council is the appointing authority, the Mayor's role in the appointment process should take the form of a veto. This is better than allowing the Mayor no role at all on these appointments, but is not the appointment and confirmation process for which the voters expressed a preference with the passage of Prop F.

The City Attorney's opinion noted correctly that "These matters can be complex." The office indicates that they are making their "best efforts to interpret the appointments' authority regarding the City corporate boards and other entities where the controlling law is not always clear." The City Attorney's office is still reviewing the issue of SANDAG, as well as the San Diego Regional Transportation Agency because of the complexity of the appointment issues that were raised in terms of these appointments through the implementation of Prop F.

Remediation Options

Can the Mayor nominate with Council confirmation every kind of body that the Council appoints? The state law sometimes specifies that the governing body holds authority. In other cases, the state law provides leeway for differently structured cities. In the past, San Diego was a Council-Manager City, and passed ordinances implementing state law accordingly. For example, this meant that in terms of Redevelopment, instead of applying the provisions of the state Health and Safety Code applicable to Mayor-Council cities—which authorized the Mayor to appoint the members of the Redevelopment Agency with Council confirmation—the City acted to make the Council the Redevelopment Agency. In other cases, the City appears to have assumed the state-provided appointment authority as a Council. This was not problematic while the Mayor was a voting member of the Council under the Council-Manager system, but now that the

City has adopted the Mayor-Council system and the Mayor does not vote with the Council, this is problematic.

Rather than facing a situation under which there are some City agencies whose members are only connected with the Mayor's office to the degree that the Mayor has not vetoed their appointments, it seems preferable to establish a nomination and appointment process that leaves the Council as the appointing body to the extent required by state law. The Council could recommend individuals to serve, the Mayor could nominate those individuals who seem appropriately qualified, and the Council could appoint from among the Mayor's nominee(s). This would ensure that individuals chosen to represent the City reflect the wishes of all members of the governing body, which includes both the Council and the Mayor.

Possible Language

"Except as otherwise provided in the Charter or mandated by federal or state law, all City officers except the City Manager shall be appointed by the Mayor subject to confirmation by the Council. For the purposes of this section, every individual who represents the City shall be considered a City officer, regardless of whether his or her representation of the City is ex officio or as an appointee to any board, commission, committee or other governmental agency established pursuant to federal or state law.

In cases where state or federal law require that the City Council act as the appointing authority, the Mayor shall nominate with the advice and consent of the Council individuals to represent the City on agencies, boards, commissions, committees and departments. The Council shall appoint representatives from among the individuals nominated by the Mayor."

Time Limits

If the Subcommittee thinks it appropriate, language could be drafted setting time limits for Mayoral and Council action on appointments, confirmations and nominations. Staff will require some direction in terms of optimal time frames to be applied.

Miscellaneous City Entities

The Subcommittee raised the issue of City agencies, boards, committees, commissions, departments and offices that were obsolete or unnecessarily included in the Charter. It would seem appropriate to provide a single appointment process for all of these bodies rather than spelling out details specific to each in the Charter.

There are some variations to take into account. For example, the Citizens Review Board on Police Practices is appointed by the Mayor without Council confirmation. The Ethics Commission, on the other hand, has its duties specified in the Charter, but the provisions for appointing it are only in the Municipal Code.

The Director of Personnel is appointed in a manner unlike most other City officers, in that a citizen's commission appoints this officer. State law does not prohibit making this officer a mayoral appointee subject to Council confirmation. In fact, this is the way Los Angeles now selects their Personnel Director. To the degree that it is possible to establish one consistent set of rules for the appointment of all City representatives, the Subcommittee can recommend such unitary language. The complication arises, of course, in terms of those bodies for which the state law controls. For those bodies, staff would suggest the adoption of the language presented above.

ATTACHMENT W
MEMORANDUM ON APPOINTMENTS

Memorandum

To: Julie Dubick
From: James Ingram
Re: Proposed language regarding appointments to outside organizations
Date: August 21, 2007

The Subcommittee requested that staff work with the City Attorney's representatives in order to arrive at compromise language as to the appointment of City representatives to outside organizations. The differences between the positions of SDCRC staff and the City Attorney's representatives have proven irreconcilable. There have been several pleasant conversations and email exchanges, but this communication has not resolved the divergence of opinions.

The City Attorney's representatives may assist the Subcommittee as to improving the form of recommended Charter language, but are not authorized to take a position as to recommending its content. In terms of form, they have contended that making the Mayor the nominating authority and the Council the appointing authority would violate controlling law. According to their position, the only way to render the proposed language acceptable would be to allow both the Mayor and the Council to nominate individuals, and then to permit the Council to make the appointments. This would be tantamount to awarding the Council sole control over both the nomination and the appointment of the City's representatives to outside organizations. The Council could simply ignore the Mayor's nominees and appoint whomever its members wished. To make the change recommended by the City Attorney's representatives would make it pointless to even add this proposed language to the Charter.

It is a supreme irony that, according to the interpretation of the City Attorney's Office, the Mayor enjoyed more appointment authority over the City's representatives to outside organizations before Prop F than the Mayor does in acting as City CEO today. The terms of Council Policy 13 granted the Mayor a role in these decisions under Council Policy 13, whereas the Mayor has no guaranteed authority in these decisions at present. To create such a convoluted appointment process as the City Attorney's representatives have indicated is necessary would violate the voter's clear intent in enacting Prop F and naming the Mayor as the head of the executive branch of City government. Furthermore, even if the Subcommittee were to make the changes in language recommended by the City Attorney's representatives, they would still not be authorized to endorse the proposed language. All this would do is to address their objections as to form. If the Subcommittee wishes to dismiss the objections raised by the City Attorney's representatives—which they have candidly admitted have not been substantiated by a single case—then it could recommend language that would provide for the kind of executive-legislative checks and balances system that voters ratified when they passed Prop F.

The staff recommendation would be that because the Subcommittee has expressed support for establishing an appointment process that follows the lines of the federal model, the members might want to adopt some version of the language proposed below. If the language is reviewed by the City Council and approved by the voters, then perhaps at some future date litigation may address its permissibility. There is never certainty as to whether any city charter changes will be approved by the courts. If the Subcommittee were to refrain from making any changes because of

the possibility of a future court challenge, then it would make no recommendations whatsoever. The absence of guarantees as to the probability any specific charter change will withstand a legal challenge accounts for the literally hundreds of pages of judicial opinions regarding these amendments since California cities began ratifying home rule charters in 1889.

Proposed Charter Language

Section 265: The Mayor
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(b) In addition to exercising the authority, power, and responsibilities formally conferred upon the City Manager as described in section 260(b), the Mayor shall have the following additional rights, powers, and duties:

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(13) Sole authority to appoint City representative to boards, commissions, committees and governmental agencies, unless controlling law vests the power of appointment with the City Council or a City Official other than the Mayor.

(A) For all boards, commissions, committees, agencies, or other entities for which controlling law requires or authorizes the City Council to act as the appointing authority, the following appointment procedure shall be employed:

(i) The Mayor shall nominate each member of the board, commission, committee, agency, or other entity, subject to confirmation by the Council.

(ii) The Council may recommend individuals to be nominated, for consideration as the Mayor's nominee.

(iii) The Council shall act to appoint or reject the Mayor's nominee within forty five days after submission of the nomination to the Council.

(iv) If the Mayor fails to nominate a member within ninety days after a vacancy first exists, the Council shall appoint the member.

(v) If the Mayor submits a nomination to the Council within said ninety day period and the Council rejects the nominee, the Mayor shall make a new nomination within ninety days of the rejection.

(B) The nomination procedure set forth in section A, above, shall not apply to a redevelopment agency or housing authority established under state law where the City Council has declared itself to be the agency or authority.

Staff Analysis

Subcommittee members raised concerns as to two of the subsections above:

The first subsection needing further discussion was Section 13(A)(ii). This language was added because the members requested it at a previous meeting. It was in part to address the fact that City Attorney's representatives had stated that allowing the Council no role in suggesting nominees might be problematic. As their fears have

still not been assuaged, the Subcommittee could choose to leave this implicit by removing this subsection, or leave it in if they see it as addressing the issues raised by the City Attorney's representatives.

The second subsection needing further discussion was Section 13(A)(iii). The 45-day timeline for Council action is drawn from the present Charter. It makes sense to allow the Mayor 90 days to suggest nominees because finding suitable candidates is a time-consuming process. However, it may not be necessary for the Council to have the same 90-day period to assess those nominees. The Mayor would presumably have filtered the potential pool, and then the Council could act upon them. The Council is not required to suggest nominees, but could use the same 90-day period to arrive at and suggest its own alternative nominees, which the Mayor could approve and nominate to the Council, if appropriate. These time frames can easily be altered, at the Subcommittee's request for different periods for any of the phases of the appointment process.

In sum, the language proposed makes the Council the appointing authority. No one could ever be appointed as the City's representative to any outside organization without the Council's approval. The staff recommends the above language, subject to any improvements made by the Subcommittee. However, the staff stands ready to assist the Subcommittee with any alternative language. As a policy choice, this is obviously not the staff's decision to make.

ATTACHMENT X
REPORT ON REDEVELOPMENT

Subcommittee on Interim Strong Mayor

Staff Report on the Redevelopment Agency by James Ingram

California's Community Redevelopment Law (CRL) is encompassed within Sections 33000-33855 of the State's Health and Safety Code. The City of San Diego acted in 1958 to assume the redevelopment responsibilities that California had granted by making the City Council the Redevelopment Agency board (RA). Because the Charter provided that the Mayor serve as a voting member and presiding officer for the City Council, this meant that the City's elected policymakers exercised redevelopment authority while wearing their RA hats. Acting as the City's RA, these officials established a set of bylaws in 1969, which they last amended in 1975. Under these bylaws, the RA designated the City Manager, or any other person it should designate, as its Executive Director.[60]

When San Diego voters ratified Prop F, they inadvertently removed the Mayor from the City's redevelopment process. Since the Mayor was only allowed to preside over the City Council in closed session meetings, and could not vote with that body, the Mayor could not act as part of the RA. However, Prop F did provide that the City Manager would be the Mayor's subordinate. In addition, Prop F placed most City staff in the executive branch of City government, and thus under the Mayor as CEO. The executive branch includes those working for the RA, and therefore they are under control of the CEO-Mayor.

During the Prop F transition, the City Council wrestled with the prospect that the RA's Executive Director and its City staff would report to the Mayor rather than to the City Council acting as RA.[61] The solution they adopted was to designate the Mayor as the RA's Executive Director. This was permitted because the RA's bylaws allowed the designation of someone other than the City Manager as Executive Director. Naming the Mayor to this position prevented creation of an ambiguous, dual reporting situation for both the City Manager and any City staff loaned out, contracted or partly employed by the RA.

The Subcommittee has expressed interest in institutionalizing the City's current solution to the issue of how to incorporate both the Mayor and the City Council in the redevelopment process. However, some have cautioned that the CRL preempts the city charter and that the process the RA adopted by resolution cannot be mandated within San Diego's organic law. This report addresses the issue of whether San Diego's Charter is competent to establish the Mayor as the RA's Executive Director.

There is reason to be careful in proposing charter amendments in areas where the state has acted, because these may be defined as matters of "statewide concern" rather than purely "municipal affairs." Just because an activity takes place within a city, this does not mean that it is by definition a "municipal affair." In such cases as *Johnson v. Bradley*, the courts have tried to establish a dividing line between those

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[60] The City Attorney's September 28, 2005 Opinion on "The Mayor's Role in the City of San Diego Redevelopment Agency Under Proposition F, the 'Strong Mayor' Form of Government" provides an excellent history of the City's Redevelopment Agency.

[61] See the August 2, 2005 Chairperson's Report to the City Council Strong Mayor-Strong Council Transition Committee on the Legal Effect of Proposition F on the City of San Diego Redevelopment Agency for a discussion of the Council's engagement with this issue.

areas in which the state has preempted city action, and those in which municipalities are unrestrained (See *Johnson v. Bradley* 4 Cal 4th 389 (1992)). However, it is critical to note that significant matters often remain under municipal control even in those policy arenas where the state has exercised virtually complete preemption. For example, even though California has assumed jurisdiction over the entire field of public education, the Constitution leaves to charter cities the decisions on how to elect their school boards to implement state law (*California Constitution*, Article 9, Section 16).

Now, just in case the courts were ever to overturn a single change to the city charter, it is important to include a severability clause. The courts generally attempt to excise the problematic provisions and retain those that are legitimate, yet severability should always be made explicit in charter changes that extend more than one sentence. That being a given, the staff do not agree with the contention that the San Diego Charter must remain silent on the RA and its Executive Director.

The City Attorney's Office has opined twice on this very issue. On August 4, 2005, the Office indicated that making the Mayor the Executive Director of the RA would be legal (pp. 6-8). The opinion characterized this kind of action as permissible because "the Executive Director is not authorized by the Agency bylaws to exercise any sovereign powers independently of the Agency board" (p. 7).

On September 28, 2005, the City Attorney issued another opinion on this matter, stating that "…the Board's appointment of the Executive Director is not limited by the CRL or the common law doctrine of incompatible offices, as the CRL leaves the existence of all Agency positions as well as the qualifications of any officer (other than the Board members) entirely up to the discretion of the Agency Board."(p. 9).

The second opinion concluded that the City could go farther than merely asking the RA to amend its bylaws regarding its Executive Director. According to this opinion, it would be legitimate for the charter to designate the Mayor as the RA's Executive Director: "Another more permanent solution would be to initiate a charter amendment. Because the CRL does not limit a charter city from enacting a charter provision that does not conflict with the CRL, and the CRL does not dictate what officers must be appointed by the Agency, we believe that the San Diego City Charter could be amended to require the Mayor to serve as the Executive Director of the Agency analogous to the Strong Mayor provisions that require the Mayor to serve as CEO for the City"(p. 14). The City Attorney even suggested actual charter language to accomplish this goal: "Charter section 265(b)(1) could be amended to require that the Mayor serve as 'Chief Executive Officer of the City *and the City of San Diego Redevelopment Agency*'" (emphasis in original, footnote 5, p. 14).

The City Attorney's representatives have expressed concern about staff's "legal theory" that the CRL's provisions authorizing a city to enact a procedural ordinance recognize that a charter city should be allowed to adopt its own procedures. They have claimed that the 17 words of Health and Safety Code Section 33204 provide too slight a foundation upon which to build a case that the City may choose to make its Mayor the Executive Director for the RA. However, the City Attorney's September 28, 2005 opinion cites this precise section, which "states that '[a] chartered city may enact its own procedural ordinance and exercise the powers granted by this part'" (p. 4). The opinion goes on to indicate that the case of *Redevelopment Agency v. City of Berkeley* exempted a city's administrative actions from control by procedural ordinance. The procedural ordinance may not be used to "*regulate the powers*"

delegated by the CRL (emphasis in original, p. 4). Does a provision requiring the RA to designate the Mayor as its Executive Director "usurp the legislative body's authority to carry out the CRL" and thus violate state law (p. 4)? The City Attorney's argument that the Executive Director is not an independent sovereign clearly indicates that it does not (August 4, 2005 opinion). If a procedural ordinance does not violate the state law, then how could an identical charter provision do so? In terms of analogies, ordinances are to charters as statutes are to constitutions. If a city ordinance is permitted to do something, then by definition a charter provision must also be allowed to do it.

California has tried very hard to accommodate the many different cities of the state within the CRL. For example, a city may create a five- or a seven-member board for its redevelopment agency (California Health and Safety Code (CHSC) Section 33110) or even make its City Council the RA board (CHSC Section 33200). In 1977, the state stretched the fabric of the California Constitution by enacting special legislation to tailor the CRL to the needs of San Bernardino, and then revised the law further for that city's convenience in 1996.[62] The state has been willing to allow municipalities leeway in designating Relocation Appeals Boards to work with the RA, creating Community Redevelopment Commissions, contracting with the Department of Housing and Community Development, as well as permitting cities to combine their institutions and ordinances for state-authorized Housing Authority and Community Development functions with those for the RA (CHSC Sections 33417.5, 33201, 33206 and 34160, respectively). All of this would seem to indicate California's flexibility in applying the CRL to divergent cities.

The City Attorney has argued in other opinions that it is important to harmonize the provisions of state law with those of the City Charter. For example, the City Attorney's February 28, 2006 opinion on appointments to outside organizations actually contended that the City Charter trumps bylaws ratified pursuant to California's Corporations Code. Based on harmonizing the conflicting provisions of the state law and the city charter, the City Attorney opined that the Mayor should (with City Council confirmation) appoint the members of the Centre City Development Corporation (CCDC), San Diego Convention Center Corporation (SDCCC) and Southeast Economic Development Corporation (SEDC). The bylaws for all three of these city corporations had made the City Council the appointing authority. Moreover, the same opinion held that the Mayor must be given veto power over appointments to all eight of the other agencies for which controlling law vests appointment power in the Council or its President.[63] The state did not authorize the Mayor to veto any of these Council appointments, yet the City Attorney ruled that implementation of the controlling law must take account of the City Charter.

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[62] Compare the original version of Section 33200 of the California Health and Safety Code in its original 1963 form with its 1977 amended form (*The Statutes of California*, Chapter 420, pp. 1431-1433) and its 1996 amendment (*The Statutes of California*, Chapter 1119, pp. 8038-8040). The 1996 statute amending the section stated that "this special statute is necessary" although "a statute of general applicability" would be required under Article IV, Section 16 of the California Constitution: "(a) All laws of a general nature have uniform operation. (b) A local or special statute is invalid in any case if a general statute can be made applicable.

[63] The eight agencies are: Horton Plaza Theatres Foundation, Inc., Local Agency Formation Commission (LAFCO), Otay Valley Regional Park Policy Committee (JEPA), San Diego Metropolitan Transit System Board (MTS), San Diego River Conservancy, San Dieguito River Valley Regional Open Space Park Joint Powers Authority, San Diego Unified Port District, and the Local Enforcement Agency Hearing Panel, Waste Management.

The attempt to reconcile charter provisions with state law before overriding is an integral part of the procedure that the United States courts have been devising ever since Dillon's Rule was issued in 1868. In fact, in this area of law, judges have generally expressed a desire to read charters perspicuously so that they are not required to overturn the will of the voters, as expressed in a city charter election (See *Johnson v. Bradley, op. cit*., p. 398). One such example of this fact comes from the recent experience of Oakland, California. Oakland recently transitioned from the Council-Manager to the Strong Mayor system, and faced a controversy very similar to that of San Diego in terms of its failure to specify the Mayor's role in redevelopment. If anything, the Oakland controversy was more problematic than San Diego's because the issue of conflict of interest arose in connection with the Mayor's role in redevelopment.

Mayor Jerry Brown was elected Mayor of Oakland in 1998, and successfully persuaded the voters to adopt Measure X, a Strong Mayor trial period very similar to San Diego's Prop F. Measure X did not clearly address how redevelopment should be handled, but did place the City Manager under the Mayor's control. Oakland's Municipal Code placed Redevelopment under a Director of the Community and Economic Development Agency, and placed the CEDA Director under the City Manager (Oakland Municipal Code Chapter 2.29.070)[64]. When the Strong Mayor form of government took effect, this placed the City Manager, and thus the director of the city's Redevelopment Agency, under the Mayor.

In Oakland, the Mayor apparently exercised redevelopment authority, although less directly than serving as Executive Director for the Oakland Redevelopment Agency: "the mayor serves as chief executive officer of the Redevelopment Agency of the City of Oakland. The agency is a separate legal entity organized under state law, but its governing structure mirrors the city's. The city council is the governing body of the redevelopment agency, and the city manager is the agency's administrator. The mayor does not serve on the agency's governing body, but as chief executive he directs the administrator" (*Brown v. Fair Political Practices Commission*, 84 Cal. App. 4th 137).

In his participation in Oakland's redevelopment process, Mayor Brown became involved in what potentially constituted a conflict of interest. He owned three parcels adjacent to or inside the Jack London Square redevelopment area that was under the control of Oakland's Redevelopment Agency. California's Fair Political Practices Commission opined that Mayor Brown's actions in regard to the redevelopment of that area would create a conflict of interest. The California Circuit Court of Appeals judged that the FPPC was incorrect, and that Oakland's Strong Mayor charter amendment mandated the Mayor's participation in redevelopment, even with this possible conflict of interest.

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[64] "Oakland's Municipal Code Chapter 2.29.070 on the Community and Economic Development Agency reads, in pertinent part: "There is established in the city government a Community and Economic Development Agency which shall be under the supervision and administrative control of the City Manager. The powers, functions and duties of said office and its departments shall be those assigned, authorized and directed by the City Manager. The management and operation of the Community and Economic Development Agency shall be the responsibility of the Director, subject to the direction of the City Manager. In the Community and Economic Development Agency there shall be the following divisions: Administration, Planning and Zoning, Building Services, Economic Development, Redevelopment, and Housing and Community Development."

The *California Official Reports Headnotes* stated in regard to the outcome of the case: "The Fair Political Practices Commission (FPPC) erred in issuing an opinion under the conflict of interest provisions of the Political Reform Act of 1974 (Gov. Code, § 81000 et seq.) concluding that a mayor who owned property contiguous to a redevelopment area could not participate in decisions concerning the redevelopment project. The mayor came within the exception of Gov. Code, § 87101, providing that an official with a conflict of interest is not barred from joining in an action or decision if his or her participation is 'legally required for the action or decision to be made.' The FPPC claimed the city manager could perform the Mayor's function on the project. However, the central feature of a city charter amendment, overwhelmingly approved by the voters, was to make the city manager answerable to the mayor, who in turn is answerable to the voters. As to the redevelopment issue, the FPPC's opinion would prohibit the mayor from even attempting to act as the chief executive promised by the amendment. City government would effectively resume the power structure that existed under the former charter, which vested the city manager with broad administrative authority and prevented the mayor or the city council from interfering with the city manager's exercise of that authority. Such a result would be inconsistent with the charter in its present form and with the will of the voters. Thus, the mayor's participation in redevelopment projects, both in their proposal and in their implementation, was legally required for city government to function in the manner demanded by the charter."

In the worst-case scenario in which a city mayor actually owned properties affected by his exercise of his charter-mandated duties, the courts ruled in favor of the charter and overruled objections arising from state law. The Court of Appeals not only supported the addition of the Mayor to the Oakland redevelopment process, but did so even in a case where this required that the city charter trump the state's Political Reform Act and its provisions dealing with conflict of interest. It is difficult to imagine a case that would more decisively demonstrate the point the staff is making in this report.

The staff have reviewed the legislative history of the CRL, all opinions of the California Attorney General related to the CRL, a myriad of pertinent cases regarding the statewide concern versus municipal affairs test from 1890-present, as well as all San Diego City Attorney opinions on this issue that are on the City's website.[65] This research shows that the voters of the City of San Diego would be acting well within their rights by amending their Charter to provide that the Mayor shall act as Executive Director of the City of San Diego Redevelopment Agency.

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[65] The California Attorney General has opined upon redevelopment in a number of instances. The relevant opinions are *44 Ops. Cal. Atty. Gen. 170* (1964), 56 *Ops. Cal. Atty. Gen.* 519 (Opinion No. CV 73-163 (1973)), 57 *Ops. Cal. Atty. Gen.* 492 (Opinion No. CV 74-152 (1974)) and 67 *Ops. Cal Atty. Gen.* 459 (Opinion No. 83-1202 (1984)). In the last of these opinions, the Attorney General ruled: "where the city council has designated itself the community redevelopment agency a city councilman does not vacate his office when he ceases to discharge his duties as a member of that agency for three consecutive months." The Attorney General based this ruling in part upon the office's 1964 opinion that when the City Council designates itself as the Redevelopment Agency, "the members of the redevelopment agency governing board hold their position by virtue of their incumbency as city councilmen." This implies that the office of city council member, as established by a charter, is superior to that of redevelopment agency. Surely, it is absurd to contend that council members are primarily elected based on voters' expectations of their performance on the RA board!

ATTACHMENT Y
MEMORANDUM ON PERSONNEL DIRECTOR

Memorandum

To: Julie Dubick
From: James Ingram
Re: Proposed Language on the Appointment and Removal of the Personnel Director
Date: July 25, 2007

Per the Subcommittee's request, the staff has drafted straw language regarding the Personnel Director. The following language would provide that the Personnel Director be appointed by and serve at pleasure of the Mayor.

Proposed Language

265(b)(16) Notwithstanding contrary language in Charter sections 37 or 116, sole authority to appoint the Personnel Director, subject to Council confirmation.

265(b)(17) Sole authority to dismiss the Personnel Director without recourse.

Staff Analysis

Section 265(b) of San Diego's Charter details the powers of the Mayor, and would be the appropriate location in the Charter for the proposed language.

The earlier staff report on this subject included a matrix on Personnel Directors comparing San Diego with other Strong Mayor cities both in California and the United States. That report demonstrated that mayoral appointment of the Personnel Director is a time-tested concept. Boston, Columbus, Detroit, Los Angeles, New York City and San Francisco all employ this system.

In Columbus, Detroit and New York City, the Personnel Director is appointed without Council confirmation, serves at the pleasure of the Mayor, and may be removed without recourse (Columbus Municipal Code Section 213.01 and 213.02; Detroit Charter Section 6-505; N.Y. Charter Section 385). In Boston, the equivalent officer is appointed by the Mayor without Council confirmation, and may be removed according to the terms of civil service law (Boston Municipal Code Section 5-1.1).[66]

Both Los Angeles and San Francisco allow an appeal process, in which a supermajority vote by the legislative body may overturn the Mayor's removal of the Personnel Director (L.A. Charter Section 508; S.F. Charter Section 10.103).

The City's Civil Service Commission would continue to recommend to the Council the rules for Civil Service, and to generally monitor the system. Yet the proposed language would clarify that the executive branch of the City is under the control of the Mayor as the Chief Executive Officer, rather than diffusing responsibility and clouding accountability, as the Charter does at present.

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[66] In Los Angeles and San Diego, the term "Personnel Director" is used. Boston calls the person analogous to San Diego's Personnel Director the Supervisor of Personnel. New York City calls this officer the Commissioner of Department of Citywide Administrative Services; Columbus, Detroit and San Francisco use the term "Human Resources Director."

ATTACHMENT Z
REPORT ON PERSONNEL DIRECTOR

Subcommittee on Duties of Elected Officials

Staff Report on Personnel Director by James W. Ingram III

Table 1: Comparative Analysis of the Personnel Director in Large California Cities

City	Pop'n, 2005	Form of Government	Top Civil Service Official	Elected or Appointed	Removal Process/Term	Officer Reports to:
Los Angeles	3,844,829	Strong Mayor-Council	Personnel Director	Appointed by Mayor with Council Confirmation	The Mayor may remove without Council approval; Removals may be appealed to Council w/in 10 days of removal; Council may act w/in 10 days to reinstate by two-thirds vote.	Mayor evaluates the officer annually.
San Diego	1,266,753 [67]	Strong Mayor-Council	Personnel Director	Appointed by Civil Service Commission (CSC) (Sec 37).	None specified; likely, the CSC would have removal authority over this officer. Section 30 states: "Officers and employees in the unclassified service appointed by the Manager or other appointing authority not under control of the Manager may be removed by such appointing authority at any time."	Manager (Mayor under Article XV) and CSC; acts as Chief Examiner subject to CSC (Sec 116).
San Jose	912,332	Council-Manager (weak mayor)	City Manager; city has no Personnel	Manager is nominated by Mayor and confirmed by	Manager serves at pleasure of Council, but may be recalled by voters. CSC members	Both the Manager and the CSC report to the Council.

[67] The 2003 U.S. Census projection was used for this figure; an accurate figure for 2005 was unavailable.

			Director, but its Civil Service Commission (CSC) serves in rule-making and appellate roles. Charter specifies: "the head of any personnel department of the City shall not hold any secretarial, executive or administrative position under the direct jurisdiction of the Civil Service Commission" Section 1001(e).	Council for an indefinite term (Secs 700, 702, 703, 1604). CSC has 5 members serving 4-year terms, appointed by the Council; no more than 4 may be of the same sex; one member must be an attorney (Sec 1001).	serve for a term, and no removal process is specified.	
San Francisco	739,426	Strong Mayor-County Board of	Human Resources Director (HRD); Civil	The CSC nominates an HRD, the Mayor appoints from	Human Resources Director serves at pleasure of Mayor, but removal may be	Human Resources Director reports to Mayor and to CSC, which can also

		Supervisors (BOS)[68]	Service Commission (CSC) to handle appeals.	among these nominees, subject to BOS confirmation (Sec 10.103). CSC consists of 5 appointees, at least 2 must be women, serving 6-year terms (Sec 10.100). Mayor appoints CSC members, unless they are rejected by a 2/3 vote of the BOS within 30 days (Sec 3.100(17)).	overridden by 4/5 vote of CSC within 30 days (Sec 10.103). CSC members may only be removed on charges in the same way as City elected officers (Sec 10.100). CSC members may only be removed under the Ethics Commission process the charter establishes for elected officials (Sec 15.105).	direct officer's work. Mayor must work with this officer or CSC in terms of civil service rather than directly being involved (Sec 10.102).
Long Beach	474,014	Council-Manager (weak mayor)	Executive Director of Civil Service Commission (EDCSC).	CSC appoints the EDCSC (Sec 1101f). CSC is 5-member body of city residents (Sec 1100), appointed by Mayor to staggered 4-year terms, subject to confirmation by Council majority (Sec 508, 509).	The Charter does not specify a removal process for the EDCSC. Sec 116 of the CSC's Rules and Regulations indicates that the EDCSC serves at pleasure of the CSC (http://www.longbeach.gov/civica/filebank/blobdload.asp?BlobID=3915). Council majority may remove CSC members, but only for cause (Sec 510).	EDCSC reports to CSC, as per CSC Rules and Regulations Sec 117 (http://www.longbeach.gov/civica/filebank/blobdload.asp?BlobID=3916).
Fresno	461,116	Strong Mayor-Council	Director of Personnel Services	CSB appointed by Mayor with Council approval	CSB members may be removed by Council motion adopted by at	CSB serves at Council pleasure. DPS serves at

[68] San Francisco is a consolidated city-county, and thus the County Board of Supervisors is the legislative body.

			(DPS); Civil Service Board (CSB).	from City's qualified electors holding no paid position in City government. The 5 board members serve staggered 4-year terms (Sec 902). No CSB member may work for city until one year after leaving CSB (Sec 908). Chief Administrative Officer (CAO) appoints DPS (Sec 1000(a1) and DPS job description (150042)).	least five affirmative votes; Council contains 7 members (Sec 902). CAO may remove the DPS (Sec 1000(a1) and DPS job description (150042)).	pleasure of the CAO (Sec 1000(a1) and DPS job description (150042)).
Sacramento	456,441	Council-Manager (weak mayor)	Director of Personnel (DOP), serving as Secretary of Civil Service Board (CSB)	DOP is appointed by City Manager (Sec 81); City Council appoints to CSB 5 citizens without connection to city government to serve for 5-year terms (Sec 80).	No removal process specified for DOP (Sec 81). CSB members may only be removed as provided by law (Sec 80).	DOP serves as Secretary of CSB, and follows its direction (Sec 81). However, the officer obviously has a reporting relationship with the City Manager as appointing authority. CSB reports to Council.
Oakland	395,274	Strong Mayor-Council	Civil Service Board	Mayor appoints CSB members, subject to	CSB members may be removed for cause, after hearing, by the	CSB administers system created by ordinance of Mayor

			(CSB); Personnel Director (PD).	confirmation by the affirmative vote of 5 of the 8 Council members (Sec 601). City Administrator (CA) appoints PD Municipal Code (MC) Sec 2.08.020).	affirmative vote of at least 6 of the 8 Council members (Sec 601). CA may remove PD (Sec 902c and MC Sec 2.08.020).	and Council (Sec 904). PD reports to CA (MC Sec 2.08.020).
Santa Ana	340,368	Council-Manager (weak mayor)	Personnel Board (PB); Executive Director of Personnel Services (EDPS).	Council majority appoints PB's 7 members to staggered, 4-year terms (Sec 901, 911). The City Manager (CM) appoints EDPS (Municipal Code (MC) Sec 9-4).	PB members are removed by Council majority, but only for cause, as defined by ordinance (Sec 901, 911). The EDPS serves at the pleasure of the CM; the CM may replace this officer at will (MC Sec 9-4).	The PB reports to Council; PB acts as an appeals body, as is typical. As such, its actions are affected by state law. The EDPS may be directed to serve as PB's Secretary, if CM desires, but EDPS reports to CM (MC Sec 9-4).
Anaheim	331,804	Council-Manager (weak mayor)	Human Resources Director (HRD)	The HRD is appointed by the City Council (Municipal Code (MC) Sec 1.05.020.010).	Neither the Charter nor the Municipal Code provides a removal process for the HRD.	HRD acts subject to direction of the City Manager (MC Sec 1.05.020.010).
Bakersfield	295,536	Council-Manager (weak mayor)	Civil Service Board (CSB); City Manager is designated as Personnel Director	CSB consists of 5 city residents unconnected to city government appointed by Council for staggered 3-year terms (Sec 209). The Council	CSB Members are removed from office in the same manner as are elective officers or by unanimous vote of Council members allowed by law to vote (Mayor may not vote in this instance because	CSB acts subject to Council approval (Sec 209). The City Manager reports to the Council (Sec 36).

			(Municipal Code Sec 2.72.040). (Note that a separate civil service system is provided for the Police Department.)	appoints the City Manager (Sec 34).	this officer may only vote to break ties on the 4-member Council) (Sec 209). The City Manager serves a term at pleasure of Council, but may be removed by 4 Council votes, with 30-day appeal rights (Sec 37.5).	
Riverside	290,086	Council-Manager (weak mayor)	Human Resources Director (HRD); Human Resources Board (HRB) acts on appeals (MC Sec 2.36.030).	The City Manager appoints the HRD (Municipal Code Section 2.36.020). HRB consists of 9 members appointed by Council (MC Sec 2.36.030).	The City Manager may remove the HRD (Municipal Code Section 2.36.020). Neither the Charter nor Municipal Code provides a removal process for the HRB).	The HRD reports to the City Manager (Municipal Code Section 2.36.020). The HRB reports to the Council (MC Sec 2.36.030).
Stockton	286,926	Council-manager (weak mayor)	Chief Examiner (CE) of the Civil Service Commission (CSC)	Council appoints 5 citizen residents without any other city position to staggered 3-year terms on the CSC (Sec 2502). The CSC appoints the City Clerk or one of the officer's deputies to act as CE (Sec 2503).	Council may remove CSC members for cause after a public hearing (Sec 2502). CE serves at the pleasure of the CSC (Sec 2503).	CE reports to CSC, and CSC reports to Council (Secs. 2502 and 2503)

Both Table 1 and Table 2 were assembled based on a search of the city charters, administrative & municipal codes, and official city websites for all cities included.

Table 2: Comparative Analysis of the Personnel Director in Large Strong Mayor Cities[69]

City	Pop'n, 2005	Form of Government	Top Civil Service Official	Elected or Appointed	Removal Process/Term	Officer Reports to:
New York City	8,213,839	Strong Mayor-Council	Commissioner of Department of Citywide Administrative Services (Chapter 35, Sec 810).	Appointed by Mayor without confirmation (Sec 385).	Serves at pleasure; may be removed by the Mayor.	Appeals are heard by an appointed Civil Service Commission, consisting of 5 members appointed by mayor to staggered 6-year terms (no more than 3 of any political party) (Sec 813). Commissioner reports quarterly to Mayor, Council, CSC and EEOC (Sec 814).
Philadelphia	1,463,281	Strong Mayor-Council	Personnel Director	Appointed by the Civil Service Commission, whose 3 members are appointed by Mayor to staggered 6-year terms (removal process unclear). (See 3-205 vs. 3-804)	Personnel Director serves at pleasure until replaced by successor. (See 3-404).	Reports on status of Civil Service to Commission and to Mayor.

[69] These cities have been classified as strong mayor cities by Craig Wheeland in the article, "An Institutionalist Perspective on Mayoral Leadership: Linking Leadership Style to Formal Structure," *National Civic Review*, Volume 91, Number 1, Spring 2002, pp. 25-39: See Table 2. Wheeland offers the most complete analysis of the nation's 40 largest cities.

Detroit[70]	886,671	Strong Mayor-Council	Human Resources Director (HRD); HRD serves *ex officio* on Civil Service Commission (CSC), which heads the Human Resources Department (Sec 6-505).	Mayor appoints person with at least 5 years experience in personnel administration as HRD (Sec 6-503, 6-504). For CSC, Mayor appoints 2 members to 2-year terms beginning in even years, the Council appoints 3 members to 2-year terms beginning in odd years (Sec 6-505).	Mayor may remove HRD, no cause necessary (Sec 6-503). CSC members may be removed only for cause by the appointing authority (Secs. 6-505).	HRD reports to Mayor (Sec 6-503). CSC reports to Mayor and Council (Sec 6-505).
Columbus	733,203	Strong Mayor-Council	Human Resources Director (HRD) heads Human Resources Department as serves as Chief Personnel Officer (MC Sec 213.02); Civil	Mayor appoints HRD, and Council sets his/her salary (MC Sec 213.02); Mayor appoints 3 electors to CSC with Council confirmation (Sec 146).	HRD serves at Mayor's pleasure (MC Sec 213.02); no removal process is specified for the CSC.	HRD reports to Mayor, although the officer must also act according to Council ordinances (MC Sec 213.01), while no reporting relationship is specified for the CSC.

[70] Detroit's Charter can be found through the following URL of Michigan city codes: http://www.law.msu.edu/library/substantive/local.html.

			Service Commission makes rules and handles appeals (Secs. 146, 149 and 149.1).			
Nashville-Davidson	595,714	Strong Mayor-Council	Director of Personnel (DOP); Civil Service Commission (CSC)	CSC appoints a person trained and experienced in Personnel Administration as DOP (Sec 12.04); CSC's 5 members are appointed by Mayor and confirmed by 2/3 of whole Council to staggered 5-year terms; CSC membership must include at least 1 lawyer and 1 labor representative (Sec 12.02).	No removal process is specified for either the DOP or the CSC.	DOP reports to the CSC (Sec 12.03); the CSC reports to Mayor and Council, judging from the appointment processes.
Boston	590,763	Strong Mayor-Council	Supervisor of Personnel (SOP)	Mayor appoints SOP (MC Sec 5-1.1).	SOP may be removed according to the terms of Civil Service law (MC Sec 5-1.1).	SOP reports to the Mayor (MC Sec 5-1.6).
Denver[71]	566,974	Strong Mayor-Council	Civil Service Commission (CSC);	CSC includes 2 mayoral appointees, 2 council	CSC members are selected for 2-year terms, but may be removed early by appointing	Both CSC and CSB report to Mayor and Council, presumably,

[71] Denver is a consolidated city-county.

			Career Service Board (CSC) (this body excludes Fire and Police Dept employees, per Sec 9.1.1E6).	appointees, and a 5th member chosen by nomination of Mayor, confirmation of Council, or Council alone if Mayor fails to nominate within 30 days (Sec 9.3.2); Mayor appoints 5 CSB members with Council confirmation (Sec 9.1.1).	authority for cause (Sec 9.3.2); CSB members serve staggered terms, fixed by ordinance (Sec 9.1.1), but no removal process is specified.	although this is not specified.
Cleveland	444,313	Strong Mayor-Council	Civil Service Commission (CSC) and its Chief Examiner (CECSC)	Mayor appoints 5 city electors, with no more than 3 belonging to same party, as members of CSC to 6-year terms (Sec 124); CSC appoints the CECSC (Sec 125).	Mayor may remove CSC members for cause after public hearing (Sec 124); no removal process is specified for CECSC.	CSC sets CECSC's salary (Sec 125). CSC reports to Mayor upon request, as well as every FY (Sec 127).
New Orleans	437,186	Strong Mayor-Council	Director of Personnel (DOP); Civil Service Commission (CSC)	CSC appoints DOP after civil service exam (Sec 8-103(2a)); 21 members nominated for CSC by 6 major area university heads and city's classified	CSC may remove DOP for cause after hearing (Sec 8-103(2e)); Council may remove CSC members for cause after public hearing (Sec 8-103(1d).	DOP reports to the CSC (Sec 8-104); the Department of Civil Service is part of the Executive Branch (Sec 8-102) and advises the Mayor and CAO (Sec 8-103(2d)), but

				employees (3 each); Council must appoint 1 nominee from each of these 7 groups' choices; if Council fails to act within 30 days, each group's lead nominee is automatically added to CSC (Sec 8-103(1a)); if any nominating authority fails to nominate, Council may choose its CSC member Sec 8-103(1c).		appears to report to the Council.

ATTACHMENT AA
MEMORANDUM ON OPTING INTO CALPERS

Memorandum

To: Lisa Briggs
From: James Ingram
Re: Should the Charter be Amended such that SDCERS Opts into CalPERS?
Date: August 25, 2007

The Subcommittee on Financial Reform expressed interest in the issue of whether SDCERS should be replaced by City employee participation in CalPERS, which is the largest retirement system in the world. Staff thought it important to point out the conditions under which the San Diego Charter presently allows such action. If the Mayor and Council favored this action, and a majority of the active membership of SDCERS approved it, and the vested rights of the active and retired members under SDCERS could be protected, there is nothing preventing the City from pursuing this course. Obviously, the City would need to find whether CalPERS would approve such action, and if so, whether the City could afford to opt into that pension system. If the Subcommittee wanted to permit the City to participate in CalPERS, Charter Section 148.1 allows this at present. However, if the Subcommittee wanted to mandate that SDCERS become part of CalPERS, then Charter Section 148.1 would be an efficient location to amend the Charter in a way that would not require altering all of Article IX. I have reproduced below the current language of the Charter regarding this matter:

"SECTION 148.1. AUTHORITY TO CONSOLIDATE CITY EMPLOYEES' RETIREMENT SYSTEM WITH STATE OF CALIFORNIA RETIREMENT SYSTEM AND/OR U.S. GOVERNMENT SOCIAL SECURITY.

Notwithstanding any of the provisions of this Article IX to the contrary, the Council may, with the approval of a majority of all active members of the City Employees' Retirement System, enter into a contract with the State of California wherein said employees shall be entitled to become members of and enjoy all of the benefits of the State Retirement System for state employees, and/or with the U. S. Government for the conferring of Social Security benefits upon such municipal employees; provided, however, that in any such contract provision shall be made for protecting and safeguarding any and all vested rights of the active and retired members of the City Employees' Retirement System as it exists under this Charter."

ATTACHMENT BB
BRIEFING ON CHARTER REVIEW IN FUTURE

Subcommittee on Interim Strong Mayor

Staff Briefing on Charter Review in Future
by James Ingram

The Subcommittee requested research regarding the issue of whether San Diego's Charter should be amended to provide that that the City will automatically convene a charter review panel on a regular basis.

At this point, the staff has found that some cities do presently include such provisions in their charters. Among the 10 largest cities (and the largest strong mayor cities) in the country, we found that Detroit provides for periodic charter review. Among the largest California cities, we found that Riverside provides such a process. Portland, Oregon is a major American city, and is in fact alone among the nation's larger municipalities in that it still uses the old commission plan charter; regardless of its archaic practices otherwise, Portland did act in May 2007 to institute a periodic charter review process in its charter. Finally, some smaller cities have occasionally established such a process, as we found for Clearwater, Florida. If the Subcommittee would like, staff can survey all of the largest strong mayor cities in the country, as well as the largest California cities. However, it seemed appropriate to present the preliminary results of our research, since this item has come up for discussion under the work-plan of this Subcommittee.

Staff Analysis

Three of the four cities surveyed so far provide that the charter review panel members shall be appointed, but Detroit's charter establishes an elected body. Two of the four cities require the City Council to place the charter review panel's recommendations before the voters, although Clearwater gives its council discretion (The specific operations of Detroit's charter review panel appear to be prescribed by Michigan's Home Rule Cities Incorporation Act).

Relevant Charter Sections from Other Cities

Portland, Oregon

Chapter 13: Charter Revision and Interpretation
###
Article 3. Provide for Periodic Charter Review
Section 13-301. Charter Commission. From time to time, but no less frequently than every 10 years, the Council shall convene a Charter review commission ("Charter Commission") to review and recommend amendments to this Charter provided, however, that the first Charter Commission shall be convened no later than two (2) years after the effective date of this Article. The Charter Commission shall be reflective of the City in terms of its racial and ethnic diversity, age and geography. It shall be comprised of twenty (20) residents of the City. Each member of the Council shall nominate 4 Charter Commission members who shall be subject to confirmation by the Council. The Charter Commission shall determine its own rules of procedure. No member of the Charter Commission shall serve as an elective officer of the City during his or her service on the Charter Commission. The Mayor or Council may request that the Charter Commission review specific sections of the Charter, but the work and recommendations of the Charter Commission shall not be subject to such specific sections. The Commission shall provide a written report of its findings to the City Council.

Section 13-302. Submission to Voters. All Charter amendments proposed by the Charter Commission supported by an affirmative vote of at least fifteen (15) members of the Charter Commission. After a public hearing process prescribed by the Council, shall be submitted to the voters of the City of Portland at the next primary or general election that is at least 120 days after the date the recommendations are presented to the City Council. All Charter amendments proposed by the Charter Commission supported by an affirmative vote of a majority but less than fifteen (15) members of the Charter Commission shall be considered as recommendations to the City Council. The Council may, but is not required to, refer such proposed amendments to the voters of the City of Portland.

Section 13-303. Effective Date. This Article 3 of Chapter 13 shall take effect on January 1, 2009."

Riverside, California

"Sec. 1403. Charter Review Committee.
In February 2004, and in February every eight years thereafter, the City Council shall appoint and appropriate adequate funds for a Charter Review Committee. The Charter Review Committee shall have the power and duty to:
(a) Recommend to the City Council which, if any, Charter amendments should be placed on the ballot at the next regular municipal election for Mayor.
(b) Hold public meetings to receive input on proposed Charter amendments.
(c) Present a final report with its recommendations to the City Council by the last Tuesday in May preceding the next regular municipal election for Mayor. It may, in its discretion, make interim reports to the City Council.
The City Council shall act upon the recommendations of the Charter Review Committee prior to the last day to place measures on the ballot for the next regular municipal election for Mayor.
The City Council may appoint Charter Review Committees more often if it desires."

Detroit, Michigan

"Sec. 9-403. Revision question.
The question of whether there shall be a general revision of the City Charter shall be submitted to the voters of the City of Detroit at the gubernatorial primary of 2018, and at every fourth (4th) gubernatorial primary thereafter and may be submitted at other times in the manner provided by law. A primary election shall be held for the offices of Charter Revision Commissioners at the same election and shall be void if the proposition to revise is not adopted. If the proposition to revise is adopted, Charter Revision Commissioners shall be elected at the ensuing general election for governor."

Clearwater, Florida

"Section 7.02. Charter review advisory committee.
The council shall appoint a charter review advisory committee in January, 1994, and at least every five years thereafter provided the appointments are made in January of a year preceding a city election. The charter review advisory committee shall be composed of not less than ten members. It shall review the existing charter and make recommendations to the council for revisions thereto."

ATTACHMENT CC
MEMORANDUM ON CHARTER REVIEW IN FUTURE

Subcommittee on Interim Strong Mayor

Staff Briefing on Charter Review in Future
by James Ingram

Per Subcommittee request on August 20, the staff has prepared straw language providing for a periodic review of the Charter by a Charter Commission, and begun to assemble a list of Charter issues that should be examined by future entities charged with reviewing the Charter.

Proposed Charter Language

Section __. Periodic Establishment of a Charter Commission.
From time to time, but no less frequently than every 10 years, the Mayor and City Council shall convene a Charter Commission to review and recommend amendments to this Charter. The first such commission shall be convened no later than two years prior to the 2020 Census. The Mayor shall appoint the members of this commission, subject to Council confirmation. The Mayor shall strive insofar as is practicable to provide a balanced representation of the geographic, gender, racial, and ethnic diversity of the City in appointing commission members. The Council shall appropriate adequate funds to support the research and analysis performed by this commission, but may also assign City staff to assist in its work. This commission shall determine its own rules of procedure. No member of the commission shall serve as an elective officer of the City during his or her service on said commission. The Mayor or Council may request that the commission review specific sections of the Charter, but its work and recommendations shall not be subject to such specific sections. The commission shall provide a written report of its findings to the Mayor and Council. The Council shall act upon these recommendations prior to the last day to place measures on the ballot for the next regular municipal election. The City Council may appoint Charter review commissions more often if it desires, as provided by law.

Staff Analysis

California law provides a number of processes through which the voters may amend their city charters. The initiative process may be employed to place before voters a charter amendment, or to call for the election of a charter commission, which is then authorized to submit its amendments to the voters. The Council may place before the voters its own recommendations for charter amendment, or forward to voters amendments recommended by an appointed charter review commission.

Some argue that charter review is too important to be left up to chance, and would prefer that the City of San Diego automatically review its Charter on a regular basis. The staff has found that other cities have indeed taken this route to ensure that regular charter review is performed. The staff drew the above language from the best parts of the charter review provisions that our research found for other cities.

Comparison of Other Cities' Provisions for Periodic Charter Review

At this point, the staff has found that some cities do presently include such provisions in their charters. Among the 10 largest cities (and the largest strong mayor cities) in the country, we found that Detroit provides for periodic charter review. Among the largest California cities, we found that Riverside provides such a process. Portland, Oregon is a major American city, and is in fact alone among the

nation's larger municipalities in that it still uses the old commission plan charter; regardless of its archaic practices otherwise, Portland did act in May 2007 to institute a periodic charter review process in its charter. Finally, some smaller cities have occasionally established such a process, as we found for Clearwater, Florida. If the Subcommittee would like, staff can survey all of the largest strong mayor cities in the country, as well as the largest California cities. However, it seemed appropriate to present the preliminary results of our research, since this item has come up for discussion under the work-plan of this Subcommittee.

Three of the four cities surveyed so far provide that the charter review panel members shall be appointed, but Detroit's charter establishes an elected body. Two of the four cities require the City Council to place the charter review panel's recommendations before the voters, although Clearwater gives its council discretion (The specific operations of Detroit's charter review panel appear to be prescribed by Michigan's Home Rule Cities Incorporation Act).

Relevant Charter Sections from Other Cities

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Section 13-302. Submission to Voters. All Charter amendments proposed by the Charter Commission supported by an affirmative vote of at least fifteen (15) members of the Charter Commission. After a public hearing process prescribed by the Council, shall be submitted to the voters of the City of Portland at the next primary or general election that is at least 120 days after the date the recommendations are presented to the City Council. All Charter amendments proposed by the Charter Commission supported by an affirmative vote of a majority but less than fifteen (15) members of the Charter Commission shall be considered as recommendations to the City Council. The Council may, but is not required to, refer such proposed amendments to the voters of the City of Portland.

Section 13-303. Effective Date. This Article 3 of Chapter 13 shall take effect on January 1, 2009."

Riverside, California

"Sec. 1403. Charter Review Committee.
In February 2004, and in February every eight years thereafter, the City Council shall appoint and appropriate adequate funds for a Charter Review Committee. The Charter Review Committee shall have the power and duty to:
(a) Recommend to the City Council which, if any, Charter amendments should be placed on the ballot at the next regular municipal election for Mayor.
(b) Hold public meetings to receive input on proposed Charter amendments.
(c) Present a final report with its recommendations to the City Council by the last Tuesday in May preceding the next regular municipal election for Mayor. It may, in its discretion, make interim reports to the City Council.
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The question of whether there shall be a general revision of the City Charter shall be submitted to the voters of the City of Detroit at the gubernatorial primary of 2018, and at every fourth (4th) gubernatorial primary thereafter and may be submitted at other times in the manner provided by law. A primary election shall be held for the offices of Charter Revision Commissioners at the same election and shall be void if the proposition to revise is not adopted. If the proposition to revise is adopted, Charter Revision Commissioners shall be elected at the ensuing general election for governor."

Clearwater, Florida

"Section 7.02. Charter review advisory committee.
The council shall appoint a charter review advisory committee in January, 1994, and at least every five years thereafter provided the appointments are made in January of a year preceding a city election. The charter review advisory committee shall be composed of not less than ten members. It shall review the existing charter and make recommendations to the council for revisions thereto."
Other Cities' Charter Language

ATTACHMENT DD
REPORT ON CHARTER REVIEW IN FUTURE

MEMORANDUM

To: Subcommittee on Interim Strong Mayor
From: James W. Ingram III, Consultant
Re: Charter Reform in Future—The Process for Charter Change
Date: 17 August, 2007

California's Constitution establishes the charter amendment process in Article 11, Section 3:

"(a) For its own government, a county or city may adopt a charter by majority vote of its electors voting on the question. The charter is effective when filed with the Secretary of State. A charter may be amended, revised, or repealed in the same manner. A charter, amendment, revision, or repeal thereof shall be published in the official state statutes. County charters adopted pursuant to this section shall supersede any existing charter and all laws inconsistent therewith. The provisions of a charter are the law of the State and have the force and effect of legislative enactments.

(b) The governing body or charter commission of a county or city may propose a charter or revision. Amendment or repeal may be proposed by initiative or by the governing body.

(c) An election to determine whether to draft or revise a charter and elect a charter commission may be required by initiative or by the governing body.

(d) If provisions of 2 or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail."

There are thus three main paths to charter change:

1. Appointed charter commission—Council may propose: proposals by such a body can only be sent to the public by the Council or through an initiative.

2. Elected charter commission—Council may propose or initiative may require: proposals by such a body must go directly to the public for consideration.

3. Charter amendments—Council or initiative may propose: only the initiative process would permit the public to vote on these without the possibility of Council involvement.

An Elected San Diego Charter Commission

1. Voters may elect a commission to enact, amend or repeal their city charter (Cal Gov Code § 34450-34451; hereinafter, Cal Gov Code = CGC).

2. A charter commission may be chosen at a general or special election (CGC § 34451).

3. Only registered voters of the city are eligible as candidates for a charter commission (CGC § 34451).

4. An election for choosing charter commissioners may be called through a petition signed by at least 15 percent of the registered voters of the city, or by a majority vote of the governing body (CGC § 34452a).

5. As of August 2, 2007, the City of San Diego had 581,356 registered voters (S.D. County Registrar of Voters, current website).

6. To qualify a petition, San Diego would need 87,204 valid signatures on a charter commission petition. Of course, more signatures would be needed than this to accommodate invalid signatures.

7. The authority in charge of the City's registration records would verify the petition. It appears that the City Clerk pays the S.D. County Registrar of Voters to perform the verification (CGC § 34452a).

8. The Council must call an election on one of the dates set by the state (see Cal Elections Code 1000) or call a special election that is consolidated with a statewide election (see Cal Elections Code 10403). If it chooses to consolidate the election with a statewide election, it must file the needed materials with the Board of Supervisors and County Registrar of Voters at least 88 days before the election. The names of the charter commission candidates who are to appear on the ballot must be filed with the County Registrar of Voters at least 81 days before the election (CGC § 34452a). The state code does not clearly provide that the election may be held along with regularly scheduled municipal primary and general elections, but that is what L.A. did. The code is somewhat unclear on this issue, but perhaps it is because the legislature did not want to allow cities to wait for the next regular election before allowing creation of a charter commission.

9. At the election, voters answer the question "Shall a charter commission be elected to propose a new charter?" (CGC § 34453).

10. Charter commission candidates are nominated the same way as municipal officers of the city usually are, or by petition following general law for general elections (CGC § 34454). For San Diego, this would likely involve the process laid out in the Election Code prescribed by S.D. Charter Section 8 and provided in S.D. Municipal Code, Chapter 2, Article 7, Division 2. See especially §27.0210 in regard to the required signatures for Mayor and City Attorney, since charter commissioners are generally elected at-large. L.A. was an exception due to an activist judge applying the Voting Rights Act under convenient conditions in which that city has 15 council members, exactly the right number of council districts to fill the 15-member charter commission the state requires).

11. On the same ballot, charter commission candidates are listed from which the voters may choose. If a majority of the voters agree to create a charter commission, then the 15 candidates with the most votes become charter commissioners (CGC § 34453).

12. Any vacancy that occurs in the charter commission is filled by Mayoral appointment (CGC § 34452b).

13. The charter commission may propose either a new charter or charter amendments (CGC § 34455).

14. This new charter (or presumably amendments to the old charter) must be signed by a majority of the charter commission and then filed with the clerk of the council--S.D. City Clerk, likely (CGC § 34455).

15. The council must print the charter in at least 10-point type (CGC § 34456).

16. The ballot pamphlet may be accompanied by arguments for or against the charter proposal, amendment, or repeal, drafted pursuant to Sections 9281 and 13303 of the state Elections Code (CGC § 34460b).

17. If the council mails the charter to the voters, it should show the changes proposed, as in bold-faced and strike-out type (this seems to apply only to charter amendments, not new charters) (CGC § 34456).

18. After the charter is filed with the city clerk, the council has 14 days to call a special election on the charter (CGC § 34457).

19. The special charter election must be held at least 95 days after the date at which the council acts in calling this election (CGC § 34457).

20. The special charter election can be held at the next municipal election, if this is at least 95 days after the date at which the council acts in calling this election (CGC § 34457).

21. The special charter election can be held at the next election date provided by state Elections Code 1000, as long as this gives the voters 95 days to consider the charter (CGC § 34457).

22. If a majority of the voters favor the new charter, charter amendment or repeal, the new charter or amended charter will take effect after being filed with the Secretary of State (CGC § 34459).

23. The requirements for filing the charter are detailed in the code (CGC § 34460 and 34461).

24. The charter commission is abolished exactly two years from the date it is elected (CGC § 34462a).

25. Within the two years of its existence, the charter commission may either submit its amendments or new charter at one election, or in separate amendments in different elections (CGC § 34462a, b).

Issues to consider:

The members of an elected charter commission will inevitably be politicians. In Los Angeles, several members ran for City Council in the districts that had elected them commissioners. Many apparently saw the charter commission as a springboard, and three out of the four charter commissioners that ran for election won office (Hahn, Pacheco and Zine succeeded, Kayser lost). Yet another charter commissioner ran as a successful base for an Assembly bid and is now a State Senator (Romero). There were several slates running for election to the charter commission; the Mayor selected a ticket, as did the labor unions.

Appendix--Relevant Sections of California Elections and Government Codes

Cal Elec Code § 1000. Regular election dates: The established election dates in each year are as follows: (a) The second Tuesday of April in each even-numbered year. (b) The first Tuesday after the first Monday in March of each odd-numbered year. (c) The first Tuesday in March in each even-numbered year. (d) The first Tuesday after the first Monday in June of each odd-numbered year, (e) The first Tuesday after the first Monday in November of each year.

Cal Elec Code § 10403. Single ballot for consolidated elections: Whenever an election called by a…city…for the submission of any question, proposition, or office to be filled is to be consolidated with a statewide election, and the question, proposition, or office to be filled is to appear upon the same ballot as that provided for that statewide election, the district, city, or other political subdivision shall, at least 88 days prior to the date of the election, file with the board of supervisors, and a copy with the elections official, a resolution of its governing board requesting the consolidation, and setting forth the exact form of any question, proposition, or office to be voted upon at the election, as it is to appear on the ballot. The question or proposition to appear on the ballot shall conform to this code governing the wording of propositions submitted to the voters at a statewide election. The resolution requesting the consolidation shall be adopted and filed at the same time as the adoption of the ordinance, resolution, or order calling the election. The names of the candidates to appear upon the ballot where district, city, or other political subdivision offices are to be filled shall be filed with the county elections official no later than 81 days prior to the election.

Cal Elec Code § 9281. Arguments for and against measure: If no other method is provided by…the charter or by city ordinance, arguments for and against any city measure may be submitted to the qualified voters of the city pursuant to this article. If a method is otherwise provided…by charter or city ordinance, for submitting arguments as to a particular kind of city measure, that method shall control. (The following article should be irrelevant, since San Diego has an Election Code, pursuant to Section 8 of its City Charter: See San Diego Municipal Code, Chapter 2, Article 7, Division 5, especially §§ 27.0508-27.0515).

Cal Elec Code 13303. Printing of copies of form of ballot to be designated "sample ballot": (a) For each election, each appropriate elections official shall cause to be printed, on plain white paper or tinted paper, without watermark, at least as many copies of the form of ballot provided for use in each voting precinct as there are voters in the precinct. These copies shall be designated "sample ballot" upon their face and shall be identical to the official ballots used in the election, except as otherwise provided by law. A sample ballot shall be mailed, postage prepaid, not more than 40 nor less than 21 days before the election to each voter who is registered at least 29 days prior to the election. (b) The elections official shall send notice of the polling place to each voter with the sample ballot. Only official matter shall be sent out with the sample ballot as provided by law. (c) The elections official shall send notice of the polling place to each voter who registered after the 29th day prior to the election and is eligible to participate in the election. The notice shall also include information as to where the voter can obtain a sample ballot and a ballot pamphlet prior to the election, a statement indicating that those documents will be available at the polling place at the time of the election, and the address of the

Secretary of State's website and, if applicable, of the county website where a sample ballot may be viewed.

Cal Gov Code § § 34450-34457, §§ 34460-34462 (2003)--summarized in the outline above

§ 34450. Provisions of article controlling: Any city or city and county may enact, amend, or repeal a charter for its own government according to this article or Article 3 (commencing with Section 9255) of Chapter 3 of Division 9 of the Elections Code.

§ 34451. Proposal by charter commission: The charter may be proposed by a charter commission chosen by the voters of the city or city and county, at any general or special election, but no person shall be eligible as a candidate for the commission unless he or she is a registered voter of the city or city and county.

§ 34452. Election for choosing charter commissioners: (a) An election for choosing charter commissioners may be called by a majority vote of the governing body of a city or city and county, or on presentation of a petition signed by not less than 15 percent of the registered voters of the city or city and county. The petition shall be verified by the authority having charge of the registration records of the city or city and county and the expenses of the verification shall be provided by the governing body thereof. The governing body shall call an election pursuant to Sections 1000 and 10403 of the Elections Code.

(b) If any vacancy arises in a charter commission established for a city or city and county pursuant to this chapter, the vacancy shall be filled by an appointment by the mayor of the city or city and county.

§ 34453. Questions submitted; Ballots; Voting: At an election the voters shall vote first on the question "Shall a charter commission be elected to propose a new charter?" and, secondly, for the candidates of the office of charter commissioner. If the first question receives a majority of the votes of the qualified voters voting thereon at the election, the 15 candidates for the office of charter commissioner receiving the highest number of votes shall forthwith organize as a charter commission. However, if the first question receives less than a majority of the votes of the qualified voters voting thereon at the election no charter commission shall be deemed to have been elected.

§ 34454. Charter commissioner; Nomination of candidates: Candidates for the office of charter commissioner shall be nominated either in the same manner provided for the nomination of officers of the municipal or city and county government, or by petition substantially in the same manner provided by general laws for the nomination by petition of candidates for public offices to be voted for at general elections.

§ 34455. Preparation of charter; Signing; Filing: The charter commissioners shall propose a charter and may propose amendments to a charter, for the government of the city or city and county city and county.

§ 34456. Printing of proposed charter; Mailing to voters: In any city or city and county, the governing body shall cause copies of the charter to be printed in type of not less than 10-point. If the governing body causes copies of the proposed charter to be mailed to the voters, the text of the proposed charter may show the difference from existing provisions of law by the use of distinguishing type styles.

§ 34457. Time of submission of proposed charter to voters: After the charter prepared by the charter commission has been filed in the office of the clerk of the governing body of the city or city and county pursuant to Section 34455, the proposed charter shall be submitted to the voters of the city or city and county at either a special election called within 14 days by the governing body for that purpose to be conducted at least 95 days after the date the special election is called, or at the next established municipal election date or at the next established election date

pursuant to Section 1000 of the Elections Code, provided there are at least 95 days before the election.
§ 34459. Ratification of charter proposal; Time to take effect: If the voters vote in favor of the charter proposal, amendment, or repeal, it shall be deemed to be ratified, but shall not take effect until accepted and filed by the Secretary of State pursuant to Section 34460.
§ 34460. Certification and authentication of copies of text of charter proposal; Filing: Three copies of the complete text of a charter proposal or of any amended or repealed section ratified by the voters of a city or city and county shall be certified and authenticated by the chairperson and the clerk of the governing body and attested by the city clerk, setting forth the submission of the charter to the voters of the city, and its ratification by them. One copy shall be filed with the recorder of the county in which the city is located, and one in the archives of the city. In the case of a city and county, one copy shall be filed with the recorder thereof, and one in the archives of the city and county. The third copy shall be filed with the Secretary of State. Each copy filed with the recorder of the county or city and county and in the archives of the city or city and county shall be filed with the following:
(a) Certified copies of all publications and notices required of the city by this chapter or by the laws of this state in connection with the calling of an election to propose, amend, or repeal a city charter.
(b) Certified copies of any arguments for or against the charter proposal, amendment, or repeal which were mailed to voters pursuant to Sections 9281 and 13303 of the Elections Code.
(c) A certified abstract of the vote at the election at which the charter proposal, amendment, or repeal was approved by the voters.
§ 34461. Acceptance and filing by Secretary of State; Publication; Judicial notice: A charter proposal, amendment, or repeal by the voters of a city or city and county and submitted to the Secretary of State in compliance with this chapter shall be accepted and filed by the Secretary of State. The charter proposal, amendment, or repeal shall be published in the statutes in a charter chapter series under the designation "Statutes of -------- (year), Charter Chapter --------." Under the chapter number, the date of the ratification election and the date of filing with the Secretary of State shall be indicated.
After a charter proposal, amendment, or repeal is accepted and filed by the Secretary of State, the courts shall take judicial notice thereof.
§ 34462. Time requirements for completion and submission of proposed or amended charter; Submission of portions to voters: (a) A charter commission established for a city and county pursuant to this chapter shall complete a proposed or amended charter and submit the charter to the voters of the city and county within two years of the date of the election of the charter commissioners, and at the expiration of that period is abolished.
(b) A charter commission may submit portions of the proposed or amended charter to the voters periodically.

Cal Elec Code §§ 9255-9281 (2003)--submitting amendments without using charter commission.
§ 9255. Charter proposals to be submitted to voters at election: (a) The following city or city and county charter proposals shall be submitted to the voters at either a special election called for that purpose, at any established municipal election date, or at any established election date pursuant to Section 1000, provided that there are at least 88 days before the election:

(1) A charter proposed by a charter commission, whether elected or appointed by a governing body. A charter commission may also submit a charter pursuant to Section 34455 of the Government Code.
(2) An amendment or repeal of a charter proposed by the governing body of a city or a city and county on its own motion.
(3) An amendment or repeal of a city charter proposed by a petition signed by 15 percent of the registered voters of the city.
(4) An amendment or repeal of a city and county charter proposed by a petition signed by 10 percent of the registered voters of the city and county.
(5) A recodification of the charter proposed by the governing body on its own motion, provided that the recodification does not, in any manner, substantially change the provisions of the charter.
(b) Charter proposals by the governing body and charter proposals by petition of the voters may be submitted at the same election.
(c) The total number of registered voters of the city or city and county shall be determined according to the county elections official's last official report of registration to the Secretary of State that was effective at the time the notice required pursuant to Section 9256 was given.
§ 9256. Publication of measure proposing to amend charter; Filing of affidavit: The proponents of a measure proposing to amend a charter shall publish or post, or both, a notice of intent to circulate the petition in the same form and manner as prescribed in Sections 9202, 9203, 9204, and 9205. The proponents shall also file an affidavit prescribed in Section 9206 with the clerk of the legislative body of the city, and, with respect to the petition, shall be subject to Section 9207.
§ 9257. Petition signed by voters to set forth full text of proposed amendment: The petition signed by registered voters of the city or city and county proposing an amendment to a charter shall set forth in full the text of the proposed amendment, in no less than 10-point type.
§ 9258. Circulated sections to contain text of proposed amendment: The petition may be circulated in sections, but each section shall contain a correct copy of the text of the proposed amendment.
§ 9259. Manner of signing petition: Each signer of the petition shall sign it in the manner prescribed by Section 9020.
§ 9260. Form of petition: Petition for Submission to Voters of Proposed Amendment to the Charter of the City (or City and County) of -------- The petition shall be in substantially the following form:

To the city council (or other legislative body) of the City (or City and County) of ----------:

We, the undersigned, registered and qualified voters of the State of California, residents of the City (or City and County) of --------, pursuant to Section 3 of Article XI of the California Constitution and Chapter 2 (commencing with Section 34450) of Part 1 of Division 2 of Title 4 of the Government Code, present to the city council (or other legislative body) of the city (or city and county) this petition and request that the following proposed amendment to the charter of the city (or city and county) be submitted to the registered and qualified voters of the city (or city and county) for their adoption or rejection at an election on a date to be determined by the city council (or other legislative body).

The proposed charter amendment reads as follows:

First. (setting forth the text of the amendment) -------- (etc.)

Signature Printed Name Residence Date

_____ _____ _____ _____

§ 9261. Affidavit of person soliciting signatures: Each section shall have attached thereto the affidavit of the person soliciting the signatures. This affidavit shall be substantially in the same form as set forth in Section 9022 and shall comply with Sections 104 and 9209.

§ 9262. Petition sections: Each petition section shall consist of sheets of white paper, uniform in size, with dimensions no smaller than 8 1/2 by 11 inches or greater than 8 1/2 by 14 inches.

§ 9263. Fastening of sheets comprising petition section: The sheets comprising each petition section shall be fastened together securely and remain so during circulation and filing.

§ 9264. Withdrawal of signature by voter: A voter may withdraw his or her signature from a petition in the manner prescribed in Section 9602.

§ 9265. Persons who may file petition; Filing of all sections at one time: The petition shall be filed with the elections official by the proponents, or by any person or persons authorized in writing by the proponents. All sections of the petition shall be filed at one time, and a petition section submitted subsequently may not be accepted by the elections official. The petition shall be filed (1) within 180 days from the date of receipt of the title and summary, or (2) after termination of any action for a writ of mandate pursuant to Section 9204, and, if applicable, receipt of an amended title or summary, or both, whichever comes later.

§ 9266. Examination of petition; Signature verification

After the petition has been filed, the elections official shall examine the petition in the same manner as are county petitions in accordance with Sections 9114 and 9115, except that, for the purposes of this section, references in those sections to the board of supervisors shall be treated as references to the legislative body of the city or city and county. The expenses of signature verification shall be provided by the governing body receiving the petition from the elections official.

§ 9267. Conformance to requirements of article; Petitions not accepted for filing: Petitions that do not substantially conform to the form requirements of this article shall not be accepted for filing by the elections official.

§ 9268. Provisions governing conduct of election and publication requirements: The conduct of election and publication requirements shall substantially conform with Part 1 (commencing with Section 10000) and Part 2 (commencing with Section 10100) of Division 10.

§ 9269. Resolution reciting fact of election; Submission of adopted measures to Secretary of State: Upon the completion of the canvass of votes, the governing body of a city or city and county shall pass a resolution reciting the fact of the election and such other matters as are enumerated in Section 10264. The elections official of the city or city and county shall then cause the adopted measures to be submitted to the Secretary of State pursuant to Sections 34459 and 34460 of the Government Code.

§ 9281. Arguments for and against measure: If no other method is provided by general law, or, in the case of a chartered city, by the charter or by city ordinance, arguments for and against any city measure may be submitted to the qualified voters of the city pursuant to this article. If a method is otherwise provided by general law, or, in the case of a chartered city, by charter or city ordinance, for submitting arguments as to a particular kind of city measure, that method shall control.

9282. The legislative body, or any member or members of the legislative body authorized by that body, or any individual voter who is eligible to vote on the measure, or bona fide association of citizens, or any combination of voters and associations, may file a written argument for or against any city measure. No argument shall exceed 300 words in length. The city elections official shall cause an argument for and an argument against the measure to be printed along with the following statement on the front cover, or if none, on the heading of the first page, of the printed arguments: "Arguments in support or opposition of the proposed laws are the opinions of the authors." The city elections official shall enclose a printed copy of both arguments with each sample ballot; provided, that only those arguments filed pursuant to this section shall be printed and enclosed with the sample ballot. The printed arguments are "official matter" within the meaning of Section 13303. Printed arguments submitted to voters in accordance with this section shall be titled either "Argument In Favor Of Measure ____" or "Argument Against Measure ____," accordingly, the blank spaces being filled in only with the letter or number, if any, designating the measure. At the discretion of the elections official, the word "Proposition" may be substituted for the word "Measure" in such titles. Words used in the title shall not be counted when determining the length of any argument.

ATTACHMENT EE
FIRST MEMORANDUM ON FILLING VACANCIES

Memorandum

To: Julie Dubick
From: James Ingram
Re: Proposed Language on Filling Vacancies
Date: July 25, 2007

Per the Subcommittee's request, the staff has drafted straw language regarding the vacancy provisions of the Charter. The following language would provide for a more flexible process for filling vacancies.

Proposed Language

Sec. AAA. Vacancy in City Offices.

An office becomes vacant when:

(a) the incumbent dies, retires, resigns, is adjudged insane, pleads guilty or no contest to or is convicted of a felony, is removed from office or fails to qualify within ten days from the time he or she receives his or her certificate of election or appointment;

(b) the incumbent ceases to be a registered voter or resident of the City, where being a registered voter or City residency is a qualification for the office;

(c) the incumbent is convicted of an offense involving a violation of official duties, including, without limitation, a violation of the conflict of interest and government ethics provisions of the Charter or City ordinances. However, removal from office for violating conflict of interest or governmental ethics provisions shall be required only if a court determines that the seriousness of the offense and degree of culpability of the officer so warrant;

(d) the incumbent has been absent from the City without the consent of the Council for more than 60 consecutive days. Absence from the City of the incumbent of an elected office shall be deemed to be with the consent of the Council if the absence was caused by illness, injury or other reason, and if the incumbent could not reasonably have been expected to have returned to the City under the circumstances;

(e) the incumbent of an elected office has ceased to discharge the duties of the office for 90 consecutive days, except when prevented by illness, injury, or other reasonable cause; or

(f) the incumbent of an elected office is found by a court to be incapacitated according to the criteria contained in Section BBB.

Sec. BBB. Determination of Incapacity.

(a) For purposes of Section AAA(f), an elected office becomes vacant when, in a *quo warranto* action or other applicable proceeding as may be established by state law, a court has found that:

(1) the incumbent is physically or mentally incapacitated due to illness, injury or other reason such that he or she cannot perform the duties of the office;

(2) the incumbent was so incapacitated for at least 90 consecutive days prior to the filing of the application with the Office of the California Attorney General for leave to sue in *quo warranto* or, if the application was not legally required, any other act commencing litigation under this subsection; and

(3) there is reasonable cause to believe that the incumbent will not be able to perform the duties of the office for the remainder of the term of office.

(b) If the City Clerk, after investigation, has reason to believe that all of the conditions set forth in subsection (a) exist, the City Clerk, on behalf of the City, shall initiate, or cause to be initiated, litigation by filing an application for leave to sue in *quo warranto* with the Office of the California Attorney General or by following any other applicable procedure as may be established by state law. Litigation under this section, in *quo warranto* or as otherwise provided by state law, may also be brought by any person authorized to do so by state law.

Sec. CCC. Filling Vacancies in the Offices of Mayor, City Attorney and Member of the City Council.

Vacancies in the offices of Mayor, City Attorney and members of the City Council shall be filled by either appointment or election in the manner set forth in this section. If a vacancy exists by reason of resignation of the incumbent, and the resignation has not been required as a result of criminal, malfeasant or otherwise unacceptable action by the incumbent, the incumbent may hold office until a successor is appointed or elected.

(a) Appointment. The Council may fill a vacancy by appointing a person to hold the office for the portion of the unexpired term remaining through the next June 30 of an odd-numbered year. If any portion of the term remains after that date, the Council shall also call a special election or elections to fill the remainder of the term, and shall consolidate the election with the primary nominating election and general municipal election next following the appointment. If a vacancy is filled by appointment after the first date fixed by law for filing a Declaration of Intention to become a candidate at the next primary nominating election, the person appointed shall hold the office for the remainder of the unexpired term.

(b) Special Election. Instead of filling a vacancy by appointment, the Council may call a special election, and special runoff election, if necessary, by ordinance for the purpose of filling the vacancy for the remainder of the unexpired term. The Council shall provide in the ordinance for the consolidation of the election with any other election and for the procedure for nominating candidates, including the amount of the filing fee, if any, to be paid by candidates and other matters pertaining to the election. In the case of a tie vote, the Council shall decide which candidate receiving an equal number of votes is elected to fill the vacancy.

(c) Recall. Any person appointed or elected to fill a vacancy may be removed from office by the recall in the same manner as if he or she had been elected to office.

Staff Analysis

The above language draws on the Los Angeles Charter as a model. June 30 is the end of that city's fiscal year, and thus is a convenient coordination point. If the above language were adopted, then the City of San Diego would handle all vacancies in elected office through a single, uniform procedure.

The language also addresses two problems raised by Council resident Scott Peters at our last Subcommittee meeting. First of all, an incumbent who resigns could hold office until the successor replaces him or her, unless criminality or other unacceptable kinds of behavior forced the resignation. Secondly, this language should allow greater leeway, so that elections do not have to be called at a

particularly inauspicious time, such as when people are involved in their holiday observances.

There are a number of current Charter sections which would need alteration if the proposed language were adopted:

Relevant Language from the Current San Diego Charter

"SECTION 12. THE COUNCIL.
###
(h) If a vacancy occurs for any reason in the office of a Council District, the procedures set forth in Charter section 12(h) shall be followed:

(1) If the vacancy occurs for any reason other than a successful recall election, and,

(A) If the vacancy occurs with one (1) year or less remaining in the term, the Council shall appoint a person to fill the vacant seat on the City Council. Any person appointed by the Council to fill a vacant Council District seat shall not be eligible to run for that office for the next succeeding term; or,

(B) If the vacancy occurs with more than one (1) year remaining in the term, the Council shall call a special election to be held within ninety (90) days of the vacancy, unless there is a regular municipal or statewide election scheduled to be held within 180 days of the vacancy. If there is a regular municipal or statewide election scheduled to be held within 180 days of the vacancy, the Council may consolidate the special election with that regular election.

(i) If one candidate receives the majority of the votes cast for all candidates in the special election, the candidate receiving the majority of votes cast shall be deemed to be and declared by the Council to be elected to the vacant office.

(ii) If no candidate receives a majority of votes cast in the special election, a special run-off election shall be held within forty-nine (49) days of the first special election, unless there is a regular municipal or statewide election scheduled to be held within ninety (90) days of the proposed special run-off election date, at which time the City Council may consolidate the special run-off election with that regular election. The two (2) candidates receiving the highest number of votes cast for the vacant seat in the first special election shall be the only candidates for the vacant Council seat and the names of only those two (2) candidates shall be printed on the ballot for that seat.

(2) If a vacancy occurs by reason of a successful recall election, the Council shall adopt procedures to fill the vacancy.

Whether a person is appointed or elected to fill a vacant Council District seat, whatever the reason for the vacancy, that person shall serve as that District's Councilmember for the remainder of the unexpired term.

For purposes of Charter section 12(h), a vacancy may result from death, resignation, recall, or unexcused absences as described in Charter section 12(i). If a vacancy occurs by reason of a resignation, the date of the vacancy will be the date specified in the written letter of resignation or, if there is no date certain specified in the letter, upon the date of receipt of the letter by the City Clerk."

"SECTION 24. MAYOR.
###
In the event of a vacancy occurring in the office of the Mayor, existing by reason of any cause, the Council shall have authority to fill such vacancy, provided, however, that if the Council shall fail to fill such vacancy by appointment within thirty (30) days after the vacancy, the Council must immediately cause an election to be held to fill such vacancy. Any person appointed to fill such vacancy, shall hold office only until the next regular municipal election, at which date a person shall be elected to serve for the remainder of such unexpired term."

"SECTION 40. CITY ATTORNEY.
###
In the event of a vacancy occurring in the office of the City Attorney by reason of any cause, the Council shall have authority to fill such vacancy, which said authority shall be exercised within thirty (30) days after the vacancy occurs. Any person appointed to fill such vacancy shall hold office until the next regular municipal election, at which time a person shall be elected to serve the unexpired term. Said appointee shall remain in office until a successor is elected and qualified."

Los Angeles Charter Language

"**Sec. 207. Vacancy in City Offices.**

An office becomes vacant when:

(a) the incumbent dies, retires, resigns, is adjudged insane, pleads guilty or no contest to or is convicted of a felony, is removed from office or fails to qualify within ten days from the time he or she receives his or her certificate of election or appointment;

(b) the incumbent ceases to be a registered voter or resident of the City, where being a registered voter or City residency is a qualification for the office;

(c) the incumbent is convicted of an offense involving a violation of official duties, including, without limitation, a violation of the conflict of interest and government ethics provisions of the Charter or City ordinances. However, removal from office for violating conflict of interest or governmental ethics provisions shall be required only if a court determines that the seriousness of the offense and degree of culpability of the officer so warrant;

(d) the incumbent has been absent from the City without the consent of the Council for more than 60 consecutive days. Absence from the City of the incumbent of an elected office shall be deemed to be with the consent of the Council if the absence was caused by illness, injury or other reason, and if the incumbent could not reasonably have been expected to have returned to the City under the circumstances;

(e) the incumbent of an elected office, or the Chief of Police has ceased to discharge the duties of the office for 90 consecutive days, except when prevented by illness, injury, or other reasonable cause; or

(f) the incumbent of an elected office, or the Chief of Police is found by a court to be incapacitated according to the criteria contained in Section 208.

Sec. 208. Determination of Incapacity.

(a) For purposes of Section 207(f), an elected office and the office of Chief of Police become vacant when, in a *quo warranto* action or other applicable proceeding as may be established by state law, a court has found that:

(1) the incumbent is physically or mentally incapacitated due to illness, injury or other reason such that he or she cannot perform the duties of the office;

(2) the incumbent was so incapacitated for at least 90 consecutive days prior to the filing of the application with the Office of the California Attorney General for leave to sue in *quo warranto* or, if the application was not legally required, any other act commencing litigation under this subsection; and

(3) there is reasonable cause to believe that the incumbent will not be able to perform the duties of the office for the remainder of the term of office.

(b) If the City Clerk, after investigation, has reason to believe that all of the conditions set forth in subsection (a) exist, the City Clerk, on behalf of the City, shall initiate, or cause to be initiated, litigation by filing an application for leave to sue in *quo warranto* with the Office of the California Attorney General or by following any other applicable procedure as may be established by state law. Litigation under this section, in *quo warranto* or as otherwise provided by state law, may also be brought by any person authorized to do so by state law.

Sec. 209. Code of Conduct of Elected Officials; Censure.

All elected officials of the City are expected to conform to the highest standards of personal and professional conduct. The Council shall have the power to adopt, by a two-thirds vote, a resolution of censure with respect to any member of the Council whose actions constitute a gross failure to meet such high standards, even if the action does not constitute a ground for removal from office under the Charter.

Sec. 210. Acting Incumbency in City Offices.

The City Controller, City Attorney, Treasurer, City Clerk and Director of the Office of Administrative and Research Services shall each designate an assistant or deputy, who shall become the acting incumbent in case of any vacancy in the office. The designation of acting incumbent shall be made in writing filed with the City Clerk, and may be changed from time to time. Upon a vacancy, the acting incumbent shall serve until the office is filled in accordance with Sections 409, 508(b) or 508(c). Any person so designated must possess the qualifications prescribed for the office and shall take the oath prescribed by the Charter before assuming his or her duties as acting incumbent. If a vacancy in the office occurs, and no acting incumbent has been designated, or if the designated acting incumbent is unable to serve, the Council may designate the acting incumbent for the office.

Sec. 211. Suspension Pending Trial.

Pending trial, the Council may suspend any elected officer, and the appointing power may suspend any appointed officer, against whom felony criminal proceedings, or criminal misdemeanor proceedings related to a violation of official duties as described in Section 207(c). The temporary vacancy shall be filled in accordance with the Charter.

###

Sec. 409. Filling Vacancies in the Offices of Mayor, City Attorney, Controller and Member of the City Council.

Vacancies in the offices of Mayor, City Attorney, Controller and members of the City Council shall be filled by either appointment or election in the manner set forth in this section.

(a) Appointment. The Council may fill a vacancy by appointing a person to hold the office for the portion of the unexpired term remaining through the next June 30 of an odd-numbered year. If any portion of the term remains after that date, the Council shall also call a special election or elections to fill the remainder of the term, and shall consolidate the election with the primary nominating election and general municipal election next following the appointment. If a vacancy is filled by appointment after the first date fixed by law for filing a Declaration of Intention to become a candidate at the next primary nominating election, the person appointed shall hold the office for the remainder of the unexpired term.

(b) Special Election. Instead of filling a vacancy by appointment, the Council may call a special election, and special runoff election, if necessary, by ordinance for the purpose of filling the vacancy for the remainder of the unexpired term. The Council shall provide in the ordinance for the consolidation of the election with any other election and for the procedure for nominating candidates, including the amount of the filing fee, if any, to be paid by candidates and other matters pertaining to the election. In the case of a tie vote, the Council shall decide which candidate receiving an equal number of votes is elected to fill the vacancy.

(c) Recall. Any person appointed or elected to fill a vacancy may be removed from office by the recall in the same manner as if he or she had been elected to office."

ATTACHMENT FF
SECOND MEMORANDUM ON FILLING VACANCIES

Memorandum

To: Julie Dubick
From: James Ingram
Re: Proposed Language on Filling Vacancies
Date: August 11, 2007

Per Subcommittee request, the staff has improved the straw language offered to alter the vacancy provisions of the Charter:

Current Charter as Marked Up to Improve Vacancy Process

SECTION 12.THE COUNCIL.
###
(h) If a vacancy occurs for any reason in the office of a Council District, the procedures set forth in Charter section 12(h) shall be followed:

(1) If the vacancy occurs for any reason other than a successful recall election, and,

(A) If the vacancy occurs with one (1) year or less remaining in the term, the Council shall appoint a person to fill the vacant seat on the City Council. Any person appointed by the Council to fill a vacant Council District seat shall not be eligible to run for that office for the next succeeding term; or,

(B) If the vacancy occurs with more than one (1) year remaining in the term, the Council shall call a special election to be held within ~~ninety (90)~~**180** days of the vacancy, unless there is a regular municipal or statewide election scheduled to be held within 180 days of the vacancy. If there is a regular municipal or statewide election scheduled to be held within 180 days of the vacancy, the Council may consolidate the special election with that regular election.

(i) If one candidate receives the majority of the votes cast for all candidates in the special election, the candidate receiving the majority of votes cast shall be deemed to be and declared by the Council to be elected to the vacant office.

(ii) If no candidate receives a majority of votes cast in the special election, a special run-off election shall be held within ~~forty-nine (49)~~**60** days of the first special election, unless there is a regular municipal or statewide election scheduled to be held within ninety (90) days of the proposed special run-off election date, at which time the City Council may consolidate the special run-off election with that regular election. The two (2) candidates receiving the highest number of votes cast for the vacant seat in the first special election shall be the only candidates for the vacant Council seat and the names of only those two (2) candidates shall be printed on the ballot for that seat.

(2) If a vacancy occurs by reason of a successful recall election, the Council shall adopt procedures to fill the vacancy.

Whether a person is appointed or elected to fill a vacant Council District seat, whatever the reason for the vacancy, that person shall serve as that District's Councilmember for the remainder of the unexpired term.

For purposes of Charter section 12(h), a vacancy may result from death, resignation, recall, or unexcused absences as described in Charter section 12(i). If a vacancy

occurs by reason of a resignation, the date of the vacancy will be the date specified in the written letter of resignation or, if there is no date certain specified in the letter, upon the date of receipt of the letter by the City Clerk**; provided, however, unless the resignation has been made for cause, such as a court finding of criminality on the part of the person resigning, that person may hold office until a successor is appointed or elected**.

###

(l) In the event that the Council must act to fill a vacancy in the office of Mayor or City Attorney, existing by reason of resignation of either officer, the following procedure shall be followed. If the officer has resigned for cause, such as a court finding of criminality, the date of the vacancy will be the date specified in the written letter of resignation or, if there is no date certain specified in the letter, upon the date of receipt of the letter by the City Clerk. If the resignation is not for cause, the Council may permit him or her to serve until a successor has been elected. If the officer does not wish to serve until a successor is elected, then the Council shall either fill the vacancy by appointment or cause an election to be held to fill the vacancy. Any person appointed or elected to fill such vacancy shall serve for the remainder of such unexpired term.

SECTION 24.MAYOR.

###

In the event of a vacancy occurring in the office of the Mayor, existing by reason of any cause **other than resignation**, the Council shall have authority to fill such vacancy, provided, however, that if the Council shall fail to fill such vacancy by appointment within thirty (30) days after the vacancy, the Council must immediately cause an election to be held to fill such vacancy. Any person appointed to fill such vacancy, shall hold office only until the next regular municipal election, at which date a person shall be elected to serve for the remainder of such unexpired term."

SECTION 40.CITY ATTORNEY.

###

In the event of a vacancy occurring in the office of the City Attorney by reason of any cause **other than resignation**, the Council shall have authority to fill such vacancy, which said authority shall be exercised within thirty (30) days after the vacancy occurs. Any person appointed to fill such vacancy shall hold office until the next regular municipal election, at which time a person shall be elected to serve the unexpired term. Said appointee shall remain in office until a successor is elected and qualified."

Staff Analysis

The above language creates more realistic timelines to be followed in the event of a vacancy in office. At the same time, it hews closely to the language of the present Charter in the event such vacancies arise. If the above language were adopted, then the City of San Diego would be able to employ a more uniform procedure to handle vacancies. The language also addresses two problems raised by Council resident Scott Peters at a previous Subcommittee meeting. First of all, an incumbent who resigns could hold office until the successor replaces him or her, unless criminality had forced the resignation. Secondly, this language should allow greater leeway, so that elections do not have to be called at a particularly inauspicious time, such as when people are involved in their holiday observances.

ATTACHMENT GG
MEMORANDUM ON INTERGOVERNMENTAL RELATIONS

Subcommittee on Interim Strong Mayor

Staff Report on Intergovernmental Relations
by James Ingram and Job Nelson

The Subcommittee requested follow-up research regarding intergovernmental relations, which the members began addressing at our last meeting.

Staff Discussion

A city's intergovernmental relations (IGR) are analogous to its foreign policy. The present charter is largely silent on the issue of who is to represent the City in its relationships with other governmental entities. Charter section 24 does state that: "The Mayor shall be recognized as the official head of the City for all ceremonial purposes, by the courts for purposes of serving civil process, for the signing of all legal instruments and documents, and by the Governor for military purposes." Charter section 265(a) echoes this section, but does not amplify it. Because the Charter vests all legislative authority in the Council, subject to the Mayor's veto and Council override, the matter of establishing the city's policy for IGR has fallen into the Council's hands.

In actual operation, the City appears to have transferred the IGR function between different officers for many years. It is important that a city speak with one voice in terms of its IGR goals. If the City has 10 different voices when addressing other governmental entities, then what is the City's actual position? If the City does not seek important state or federal action with a united front, what is the likelihood that San Diego will achieve important policy goals and acquire funding from other levels of government when it is available?

Proposed Charter Language

Option 1: Legislative Program Subject to Confirmation

Article XV, Section 265
###
(b) In addition to exercising the authority, power, and responsibilities formally conferred upon the City Manager as described in section 260(b), the Mayor shall have the following additional rights, powers, and duties:
###
(16) Represent the City before state and federal legislative and administrative bodies. The Mayor shall propose and administer a state and federal legislative program for The City of San Diego and that Legislative Program shall be subject to confirmation by the City Council.

Option 2: Legislative Program Following Current Municipal Code

Article XV, Section 265
###
(b) In addition to exercising the authority, power, and responsibilities formally conferred upon the City Manager as described in section 260(b), the Mayor shall have the following additional rights, powers, and duties:
###

(16) Represent the City before state and federal legislative and administrative bodies. The Mayor shall be responsible for planning, recommending, coordinating and administering a state and federal legislative program for The City of San Diego in accordance with legislative guidelines established by City Council Policy.

Staff Analysis

If the Subcommittee decides to adopt Option 2, then it would be important to explore the issue of whether the legislative guidelines are subject to Mayoral veto.

Other cities do explicitly provide a method for establishing IGR in their charter. For example, New York City authorizes the Mayor to submit the city's strategic policy statement, and finalize that document after feedback from other city officials. New York's City Charter also authorizes the Mayor's Office of Operations to "recommend legislative proposals or other initiatives that will benefit people with mental retardation or developmental disabilities" (Section 15). Finally, the city's charter provides the Mayor and his or her agents with authority over coordinating virtually every city function with those of state and federal agencies.

So far, staff has found that other cities also provide a process for handling IGR in their charters. Philadelphia appears to grant the Mayor exclusive authority in this area. Los Angeles has created a process in which both the Mayor and the Council are involved, but in which the Council's Chief Legislative Analyst plays a key role. This research is still ongoing, and staff can present findings from a more extensive survey if the Subcommittee finds this would be helpful.

Relevant Sections from Other Cities' Charters and Municipal/Administrative Codes

New York City

"§ 17. Strategic policy statement. a. On or before the fifteenth day of November of nineteen hundred ninety, and every four years thereafter, the mayor shall submit a preliminary strategic policy statement for the city to the borough presidents, council, and community boards. Such preliminary statement shall include: (i) a summary of the most significant long-term issues faced by the city; (ii) policy goals related to such issues; and (iii) proposed strategies for meeting such goals. In preparing the statement of strategic policy, the mayor shall consider the strategic policy statements prepared by the borough presidents pursuant to subdivision fourteen of section eighty-two.

b. On or before the first day of February of nineteen hundred ninety-one, and every four years thereafter, the mayor shall submit a final strategic policy statement for the city to the borough presidents, council and community boards. The final statement shall include such changes and revisions as the mayor deems appropriate after reviewing the comments received on the preliminary strategic policy statement."

"§ 15. Office of operations. a. There shall be, in the executive office of the mayor, an office of operations. The office shall be headed by a director, who shall be appointed by the mayor.

###

d. 1. The city of New York recognizes that services for people suffering from mental retardation and developmental disabilities are provided by programs administered within a number of different city agencies, as well as by non-

governmental entities. The city of New York further recognizes the need for coordination and cooperation among city agencies and between city agencies and non-governmental entities that provide such services.

2. There shall be mental retardation and developmental disability coordination within the office of operations. In performing functions relating to such coordination, the office of operations shall be authorized to develop methods to: (i) improve the coordination within and among city agencies that provide services to people with mental retardation or developmental disabilities, including but not limited to the department of health and mental hygiene, the administration for children's services, the human resources administration, department of youth and community development, the department of juvenile justice, and the department of employment, or the successors to such agencies, and the health and hospitals corporation and the board of education; and (ii) facilitate coordination between such agencies and non-governmental entities providing services to people with mental retardation or developmental disabilities; review state and federal programs and legislative proposals that may affect people with mental retardation or developmental disabilities and provide information and advice to the mayor regarding the impact of such programs or legislation; recommend legislative proposals or other initiatives that will benefit people with mental retardation or developmental disabilities; and perform such other duties and functions as the mayor may request to assist people with mental retardation or developmental disabilities and their family members."

Philadelphia

"Section 4-105
Promotion of the City.
It shall be the duty of the Mayor to exercise the powers of his office and to encourage among all the executive officers in the City the use of their official powers, to promote and improve the government of the City, to encourage the commercial and industrial growth of the City and of the Port of Philadelphia, and to promote and develop the prosperity and social well-being of its people.
ANNOTATION
Sources: No specific source.
Purposes: The Mayor is charged specifically with the duty of directing the efforts of the City government towards making the City a better place for its inhabitants. This envisages measures for commercial, industrial, economic and social well-being and development."

Los Angeles

Charter Sections

"Sec. 231. Powers and Duties.
The Mayor shall have the power and duty to:
###
(h) represent the City in intergovernmental relations in accordance with City policy and supervise the City's intergovernmental relations function…."

"Sec. 254. Legislation Pending Before State and Federal Government
The Council, by resolution, may establish the official position of the City with respect to legislation proposed to or pending before the state or federal government. The resolution shall be subject to veto by the Mayor, and override of the Mayor's veto by

a two-thirds vote of the Council. The Council, by ordinance, shall adopt procedures to implement the provisions of this section, which procedures shall set the time periods for Council and Mayoral action."

Administrative Code Sections

"Sec. 2.19. Procedure for Establishing Official City Positions.

(a) Official City Positions. The provisions of this section shall govern the process for establishing the official positions of the City with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency. Once established as provided herein all such official positions shall be in writing and shall contain a summary of the proposed or pending legislation, rule, regulation or policy and the City's position thereon. Said positions may refer to a specific bill or to a type of legislation or policy. Copies of each shall be filed with the City Clerk. Any such position shall remain in effect as specified in the action taken or until modified or repealed as provided herein. No person or department affiliated with the City of Los Angeles may represent that the City of Los Angeles supports, opposes, seeks, wishes to amend or has any position regarding any legislation, rules, regulations or policies unless such position has been adopted as an official position of the City of Los Angeles.

(b) Adoption of City Positions on Legislation, Rules, Regulations and Policies.

(i) On or before October 1 of each year, the Mayor and each elected officer of the City shall submit to the City Council changes they wish the City to propose to local, state and federal laws. Prior to such submission, the Mayor shall survey the various City departments and offices to ascertain the changes such offices and departments wish to consider to local, state and federal laws, and those changes considered essential to such departments operations shall be included in the Mayor's submission to the City Council.

(ii) On behalf of the City Council, the Chief Legislative Analyst shall review each proposal and submit each proposal in the form of a resolution to the Council with recommendations for action thereon.

(iii) If any such resolution is adopted by the Council, the City Clerk shall present the resolution to the Mayor for consideration with the date of presentation affixed.

(iv) If the Mayor concurs with the resolution, the Mayor shall sign the resolution and return it to the Clerk, in which case the resolution becomes effective immediately. If the Mayor vetoes the resolution, the Mayor shall return it to the Clerk with a written statement of objections. If the Mayor does not veto the resolution within ten (10) working days after its presentation, or in a shorter time period as prescribed by a two-thirds vote of the Council in cases where expedited action is required, (which shorter time period shall not be less than two (2) working days) the resolution shall become effective.

(v) If vetoed by the Mayor, the Clerk shall present the resolution, with the objections of the Mayor, at the first Council meeting thereafter, consistent with applicable law, after the Clerk has received the Mayor's objections. By two-thirds vote, the Council may approve the resolution over the veto of the Mayor in the ten (10) meeting days of the City Council during which the Council has convened in regular session after its presentation by the Clerk; provided however, that if the Council has determined that expedited action is required as provided in clause (iv) above, then Council must act to approve the resolution over the veto of the Mayor in the same number of Council meeting days as the Mayor had in working days to veto such resolution.

(vi) Nothing contained herein shall affect the ability at any time of the Council to request, or of the Mayor, elected and appointed City officers, and departments to submit proposals for changes to local, state and federal laws, rules, regulations and policies which are considered essential to their operations at any other time, and such proposals shall be acted upon in the same manner as provided in Clauses (ii) through (v) above.

(vii) Nothing contained herein shall affect the ability of the Council or the Mayor to initiate proposals at any other time for changes to local, state and federal laws, rules, regulations and policies. Such proposals shall be acted upon in the same manner as provided in Clauses (ii) through (v) above.

(c) Guidelines for Review of Pending Legislation, Regulations, Rules and Policies. The City Council in order to enable it to perform its work shall not later than December 1 of each even numbered year, adopt guidelines for use by the Chief Legislative Analyst in reviewing local, state and federal legislative proposals, including rules, regulations and policies and developing recommendations to the Council for official City positions with respect to such proposals. Any recommended positions on a legislative proposal developed by the Chief Legislative Analyst that is consistent with the Council's guidelines shall be incorporated into a resolution and submitted to the Council for its consideration. Any such resolution that is adopted by the Council shall be forwarded to the Mayor for consideration as provided in Section (b) Clauses (iii) - (v) above.

(d) Urgency positions. In the event that the Mayor and the President of the City Council, or the Chief Legislative Analyst acting on behalf of the President of the City Council, agree that exigent circumstances require that a legislative position be adopted immediately to protect the City's interests, such tentative legislative position shall be determined by them by mutual agreement and shall be deemed part of the City's legislative program and shall be communicated by the Mayor to the appropriate governmental agencies and shall simultaneously be referred to the Council in the form of a resolution for consideration at its next regular meeting, consistent with applicable law, and processing in the same manner as provided in (b) Clauses (ii) - (v) above. In the event that the Council disagrees with the Mayor and Council President, or their designees, such policy position shall cease to be an official City legislative position, and such fact shall immediately be communicated to the governmental agencies involved."